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No. 11919

**United States  
Circuit Court of Appeals  
For the Ninth Circuit.**

NATIONAL LABOR RELATIONS BOARD,  
Petitioner

vs.

O'KEEFE AND MERRITT MANUFACTURING  
COMPANY, etc.,

Appellees.

UNITED STEELWORKERS OF AMERICA,  
STOVE DIVISION, LOCAL 1981, C.I.O., and  
PHILIP MURRAY, Individually and as  
President of the United Steelworkers of  
America, C.I.O.,

Intervenors.

**Transcript of Record  
In Four Volumes  
VOLUME IV  
Pages 1369 to 1778**

**Upon Petition for Enforcement With Modifications of an  
Order of the National Labor Relations Board.**

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(Testimony of Lawrence Matrenga.)

Q. Do you know who that was for?

A. Martin Ross.

Q. Would you say that again, and a little louder?

A. Martin Ross.

Q. Do you remember when V-J Day was?

A. I do.

Q. How many employees did you have in your department then?

A. About the same amount.

Q. What were you making then?

A. Same thing, faucets, plumbing ware. We were making mostly plumbing ware.

Mr. Garrett: May I have that answer read?

(The answer was read.)

Q. (By Mr. Garrett): Has your department always done outside work for outside people?

A. We have.

Q. You have a regular custom foundry there, have you?

A. Foundry. We run the outside work and before the war we was doing outside work and our work, too.

Q. Is that the way it is right now, today?

A. Not today, no. Make our own work today.

Q. What kind of work is that?

A. Range parts.

Q. About how many men in your department now?

A. Between 70 and 80.

Q. How long have you worked there?

A. Oh, 24, 25 years.

(Testimony of Lawrence Matrenga.)

Q. Did you do any work with Johnny Levascos after the election?      A. No, sir.

Q. Were you on any committee with Johnny Levascos after the election?      A. No, sir.

Mr. Garrett: No further questions.

Mr. Collins: That is all.

Q. (By Mr. Nicoson): You are now working for the Pioneer Electric Company; aren't you?

A. Now I am.

Q. Is that correct?      A. Yes.

Q. And all through the war, is it your testimony that you were making these faucets and plumbing things and outside work in your foundry?

A. Yes.

Q. When you went over to Pioneer, when Pioneer took over, whichever is the correct way, did the work you were doing change in any manner?

A. Same thing.

Q. You were doing substantially the same thing now you were doing for O'Keefe and Merritt; is that correct?      A. Yes.

Mr. Collins: I object to that as assuming a fact not in evidence. He testified all this outside work went out, and they are just doing Pioneer work now.

Mr. Garrett: I think that is a double barrel question. Part of it referred to the period after V-J Day and part of it referred to now.

Mr. Collins: I move the answer be stricken on that ground.

Mr. Nicoson: All right.

Mr. Collins: May I have the ruling?

(Testimony of Lawrence Matrenga.)

Trial Examiner Kent: Well, of course, it is cross-examination. [1279] I think the record may remain, but I think there may be an ambiguity that may be cleared up.

Mr. Nicoson: I will try.

Q. (By Mr. Nicoson): Prior to February 4th, you were operating foundries at O'Keefe and Merritt, weren't you?

Mr. Nicoson: Strike that.

Q. (By Mr. Nicoson): Prior to February 4th, you were foreman of the foundry of O'Keefe and Merritt; isn't that correct? A. Correct.

Q. And after February 4th you were foreman for the foundry for the Pioneer Electric Company; is that correct? A. Right.

Q. While you were working for O'Keefe and Merritt, before February 4th, you were engaged in foundry business; isn't that correct?

A. That is right.

Q. And after you went over to work for the Pioneer, after February 4th, you were still engaged in foundry business; isn't that correct? A. Yes.

Q. You said something about the change from the outside work, that you are not doing it today. Do you remember that testimony? A. Yes.

Q. When did you stop doing the outside work?

A. Right after V-J Day.

Q. Then it is your testimony that on February 4th you had already discontinued doing the outside work; isn't that correct? A. That is right.

Q. You were then making, or is it your testi-

(Testimony of Lawrence Matrenga.)

mony you were then making stove parts, range parts, and things of that nature?

A. Well, I did a little outside work, when we didn't have enough of the other range parts to do.

Q. But as the range parts work increased you discontinued the outside work?

A. Discontinued the outside work.

Q. Until the time you arrived at the place you were doing nothing in the way of outside work, but you were doing range work? O. Yes.

Q. That is the situation that existed when you went over to Pioneer; isn't that correct?

A. Went over to Pioneer.

Q. That is what is going on now? A. Yes.

Mr. Nicoson: That is all.

Mr. Tyre: I have one question. When did you go on the Pioneer Company payroll? [1281]

The Witness: Give me my first—

Mr. Collins: I object.

Mr. Nicoson: I join in the objection if you will state it. He wouldn't know. How could he?

Mr. Collins: I object on the ground it is improper examination. I asked this man two or three questions about Charlie Spallino. Now we are talking about faucets and when he went to work for Pioneer and a million things.

Mr. Nicoson: It was brought out and you didn't object. I didn't start it. I am just trying to finish it.

Mr. Collins: We are starting off on another. I object.



Mr. Nicoson: I join with you in that objection. I don't think he is qualified to answer that question.

Mr. Garrett: I think he is qualified to answer. As a matter of fact, what is the use of bringing him back here, even if it isn't proper cross?

Mr. Tyre: I will withdraw the question.

Trial Examiner Kent: Are there any further questions?

Mr. Garrett: No questions.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Collins: Mr. Frank Vaicaro.

### FRANK VAICARO

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows: [1282]

#### Direct Examination

By Mr. Collins:

Q. State your name.

A. Frank Vaicaro.

Q. Mr. Vaicaro, calling your attention to some time prior to the 20th of November, 1945, were you employed by the O'Keefe and Merritt Company?

A. Yes.

Q. What was your job? A. I was foreman.

Q. In what department?

A. Drill press department.

Q. Did you have an employee working for you by the name of Charles Spallino? A. Yes.

(Testimony of Frank Vaicaro.)

Q. Did Charles Spallino ever ask your permission to leave the department? A. No.

Q. He did not? A. No.

Q. Was it customary for Charles Spallino to leave the department in connection with his activities with the Five and Over Club? A. No.

Q. Did he have business that he had to take care for the Five and Over Club, like the running of the lunch stand? A. Yes. [1283]

Q. Did he have business, such as taking care of the candy bar concession, if you know?

A. I don't remember.

Q. Did he have any conversation with you at any time about turkeys? A. Yes.

Q. What was his conversation?

A. He told me he had to go out and issue the turkeys out of the truck.

Q. This was some time before the 20th of November, before the election out there; is that right?

A. Yes.

Q. Did he tell you that he was going out and get cards signed up for A.F.L.? A. No.

Q. When he told you he was going out and issue the turkeys, what did you say to him?

A. I said, "All right."

Q. Did he have any other activities that he had to take care of for the Five and Over Club—

Mr. Collins: I will withdraw that question.

Q. (By Mr. Collins): Did he have any activities in connection with getting himself elected or

(Testimony of Frank Vaicaro.)

keeping himself in office as an officer of the Five and Over Club, that you know of? [1284]

A. I don't get that.

Mr. Collins: Well, I will reframe the question.

Q. (By Mr. Collins): Charlie was kind of a politician out there; wasn't he? A. Yes.

Mr. Nicoson: Ask him if he campaigned it. I don't care. I will stipulate he did. He probably did.

Q. (By Mr. Collins): Did he campaign for re-election as president of the Five and Over Club?

A. No.

Q. Do you know whether he was an officer for re-election in the Five and Over Club?

A. I don't know.

Q. You don't know. A. No.

Q. You don't know whether he campaigned or not? A. Yes.

Q. The answer is yes?

Mr. Nicoson: He said yes.

Q. (By Mr. Collins): The answer is you didn't know whether he campaigned or not? A. No.

Mr. Collins: You may cross-examine.

Mr. Nicoson: No questions. [1285]

Mr. Garrett: No questions.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Collins: Mr. Frank Doyle.

FRANK DOYLE

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Collins:

Q. Mr. Doyle, what is your first name?

A. Frank.

Q. Frank Doyle. Who are you working for now?

A. O'Keefe and Merritt Company.

Q. Have you ever worked for Pioneer Electric?

A. No.

Q. You will have to talk louder, so the reporter will get it.      A. No.

Q. Are you a member of any labor union?

A. No.

Q. Did you ever ask me about whether you should join the A.F.L. or the C.I.O.?

A. I asked you whether you thought I had to join one of them, one or the other, and you told me it was not a closed shop and that I wasn't obliged to join either one of them. So I didn't join. [1286]

Q. Did I tell you you would be discriminated against in some way if you didn't join the A.F.L.?

A. Oh, no.

Q. Did you attend any meetings with myself, Mr. Conway, Mr. Despol—

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): Did you attend any meetings in my office when either Mr. Despol or Mr. Conway was present?      A. One.

(Testimony of Frank Doyle.)

Q. Are you able to fix the approximate date of that meeting?

A. It was the latter part of December, I believe.

Q. Latter part of December? A. Yes.

Q. Was Mr. Conway present at that meeting?

A. No, I don't believe so.

Q. Was Mr. Despol? A. Yes.

Q. Who else was present, to the best of your recollection?

A. There was Joe Sanchez and Fred Rotter, you and myself, Mr. Despol.

Mr. Tyre: I can't hear.

The Witness: Mr. Collins and Mr. Despol. There were two or three others. I don't remember their names. I don't see them here.

Q. (By Mr. Collins): What is your job at O'Keefe and Merritt? [1287]

A. I am in the service parts department.

Q. You are not a foreman or supervisory officer of any kind; are you? A. No.

Q. Who asked you to come up to my office?

A. I believe that Mr. Levascos asked me to be present, to listen on the proceedings, since I was one of the older employees in the plant.

Q. Now, calling your attention to this meeting in my office at which Mr. Despol was present, did he present me with some sort of a contract on behalf of the C.I.O. that he wanted me to sign?

A. Yes.

Q. Did I say to Mr. Despol, or words to the effect that certain provisions of the contract was acceptable? A. Yes.

(Testimony of Frank Doyle.)

Q. And that certain of them were either not acceptable or would require some more discussion?

A. That is right.

Mr. Nicoson: I can't hear the witness.

The Witness: Yes. I am sorry.

Q. (By Mr. Collins): Was there any mention made at this first meeting you attended of the Pioneer Electric Company?

A. There was some mention made about the taking over and fabricating the parts for the O'Keefe and Merritt. But I don't [1288] recall all of the discussion. I wasn't greatly interested in it. I was listening in on the proceedings at the time.

Q. What did Mr. Despol say when I told him that the Pioneer Electric Company might take over the manufacture of the gas ranges?

A. He said it didn't make any difference, they weren't going to let down just because of them taking over. I believe he said something about straight, straight bind the place and we wouldn't get the steel; some discussion along that line. I can't give you word for word. That was the theme of the discussion.

Q. Did he say anything about all the trouble and expense they had gone to to organize the plant?

Mr. Tyre: I am going to object, Mr. Examiner. I would like to have counsel told once and for all to his own witnesses he must ask questions which are proper and not leading and suggestive questions.

Trial Examiner Kent: I think this question should be reframed.

(Testimony of Frank Doyle.)

Q. (By Mr. Collins): Relate any further conversation you can remember.

A. Well, I remember Mr. Despol saying that they could tie us up and throw a picket line around the plant.

Q. What did I say about that?

A. You said that the head breaking days were a thing of the [1289] past, and that we had ample police protection and none of the employees were afraid now to come through the lines any more, so that wouldn't do much good.

I believe then there was some discussion about the steel. He said they wouldn't get any steel, and I remember you said we had some method of getting some steel in there to keep us going, anyway, for a period of some time. That was the theme of the discussion at that time, as I remember it.

Q. What else was said, if you can remember it?

A. Oh, well, discussion of the contract, various phases were discussed on the contract. I don't remember just what they were.

Q. Now, with reference to this question I just asked you, when I told Mr. Despol that it was in the contemplation of the parties that Pioneer might take over the manufacture of those gas ranges and other products, what did he say in direct response to that statement of mine?

A. Now, you mean when you mentioned the fact that the Pioneer might take over the fabrication?

Q. Yes.

A. He said that it wouldn't make any bit of difference, they weren't going to let down on the

(Testimony of Frank Doyle.)

work they had done in there already; and they were going to go through with it.

Q. Was there anything said about the trouble and expense [1290] they had gone to?

A. Yes. I believe they said they had spent a lot of time and money on those loud speakers out there and literature. [1291]

Q. What did I say when he said he had spent a lot of money on literature and loudspeakers and organizing?

A. If I remember you said you didn't want to see them lose any money on account of that, but you would have to take it up with your superiors, anything that would deal with that. You had no say in the matter, as I understand it, if I remember rightly; something to that effect.

Q. Was there any suggestion on my part concerning a court action?

A. Yes, I remember that you suggested that if he thought there was—it wasn't right that they could take it and bring it before the National Labor Relations Board, I believe.

Q. Prior to the election itself did you ever hear of any contemplated action throughout the plant concerning what Pioneer might do after the war and so on?

Mr. Nicoson: Objected to; immaterial, rumor; hearsay.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: He may answer.



(Testimony of Frank Doyle.)

The Witness: Only being interested in our work and job. Since we were all interested in our jobs the discussion went around that the Pioneer might buy out the O'Keefe and Merritt. We didn't know to just what extent. It was talked about by all the fellows down there pro and con. [1292] Nobody knew exactly and nobody had anything official; we weren't told officially what it was exactly.

Q. It was a matter of common knowledge?

A. It was a matter of common knowledge, yes, I think so.

Q. Have you ever at any time heard either myself or anybody in authority at the O'Keefe and Merritt Company threaten to discriminate against anyone for any kind of union activity?

Mr. Nicoson: Objected to as calling for a legal conclusion and beyond the qualifications of this witness; also leading.

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): Have you at any time heard me or anyone in authority at the company discuss the union activities of any employees?

A. No, I never.

Q. Have you ever at any time heard anybody in authority threaten to take any form of disciplinary action against any employee for activity on behalf of any union?

Mr. Nicoson: Objected to as calling for a legal conclusion of the witness, and also leading.

As counsel stated, I think counsel should be admonished this is his witness and he shouldn't lead him. I suggest your Honor do that.

(Testimony of Frank Doyle.)

Trial Examiner Kent: In view of the general allegations [1293] of the complaint it is pretty hard to frame those questions. I think the answer may be taken.

Mr. Nicoson: I regret the difficulty in framing the question. I still think I have a right to insist they be framed properly.

Q. (By Mr. Collins): You may answer.

Trial Examiner Kent: You may answer.

The Witness: I never heard you or anybody else say that there would be any disciplinary action, if that is what you mean, against anybody that joined a union.

Q. (By Mr. Collins): What instructions, if any, did you receive from anybody in authority concerning your activities with any union?

A. I remember I distinctly asked you whether I had to join the union. I didn't know what was going on down there. You said I didn't have to join any union, regardless of what anyone was to say around—the fellows was talking about whether we join or not join. You said I didn't have to join a union and, of course, I didn't.

Q. Was anybody present when you asked me that, that you can recall?      A. Yes.

Q. Who?

A. Bill Cole was in the office when I happened to run [1294] up there. He is my supervisor.

Don't you remember I stepped in and asked what I was to do, do I have to join the union. You said I didn't have to join the union.

(Testimony of Frank Doyle.)

Q. Bill Cole, what is his job? Did you say?

A. He is my supervisor.

Mr. Nicoson: His testimony is he was present or just merely in the office?

Mr. Collins: He was present.

Q. (By Mr. Collins): Was he present?

A. Yes, he was present in the office at the time I came upstairs.

Q. How far away from me was he when I told you that?

A. He was sitting right beside your desk.

Q. Is he a relative of mine?

A. I believe so.

Q. What relation, if you know?

A. I believe he is a brother-in-law.

Q. And he is the foreman of the service department?

A. He is the foreman of the service department, yes.

Mr. Collins: You may cross-examine.

### Cross-Examination

By Mr. Nicoson:

Q. Where was Mr. Collins when you asked him if you had to join the union?

A. He was sitting in his office upstairs. He has an office.

Q. In his office? A. Yes, sir.

Q. You went up to his office? A. Yes.

Q. And you asked him if you had to join the union? A. That is right.

(Testimony of Frank Doyle.)

Q. How did you happen to go up there?

A. Well, the union activity was going on and many men had joined the union, and I hadn't joined it and I didn't know what my standing would be if I didn't join the union, so I wanted to clarify it, and it is very hard to catch him in, so when I heard that he was in there I went right on up to see him.

Q. What union activity was going on?

A. I knew there were men joining the various unions down there. I never saw any of them join, but I knew some of them belonged to the A.F.of L. and some of them belonged to the C.I.O.

Q. Was this before or after the election?

A. That is after the election.

Q. After the election. How did you know that there were people joining the A.F.of L. and the C.I.O. down there, tell us about that.

A. Because they were all around me. [1296]

Q. What do you mean they were all around you?

A. Well, my fellow workers.

Q. Did you see them actually signing cards?

A. No, I didn't see them signing cards, but I heard them say they belonged to it.

Q. This was conversation you had among yourselves?      A. Just conversation among ourselves.

Q. How long after the election was that going on?

A. Oh, I don't know exactly. I don't remember exactly how long.

Q. Give me your best approximation.

A. Oh, I suppose it was soon after the election.

Q. Soon, within a week?

(Testimony of Frank Doyle.)

A. No, possibly, well, suppose a week, two weeks, three weeks, it was anywhere in those. I can't remember exactly.

Q. Was that about the time you went to Mr. Collins' office when you met Mr. Despol?

A. I beg your pardon? May I have the question again?

Mr. Nicoson: Yes, will you read it to him.

(The question was read.)

A. Oh, no, it was before that.

Q. How long before?

A. Oh—may I ask, you mean when I asked Mr. Collins if I could join the union, was it before I had met Mr. Despol or afterward? [1297]

Q. Yes.

A. Let me see. Oh, it was long afterward.

Q. Long after you met Mr. Despol?

A. Yes.

Q. And this conversation about the employees joining the various organizations, was that also after you met Mr. Despol? A. Yes.

Q. What did Mr. Levascos say to you when he came down there?

A. I can't remember his exact words. He asked me if I wished to attend the meeting on the reading of the contract of the C.I.O. that was being held in Mr. Collins' office, and I said all right, I would listen in on it.

Q. Was that all the conversation you had about it? A. That is all the conversation I had.

(Testimony of Frank Doyle.)

Q. Did you go immediately then to Mr. Collins' office?

A. No, that was—I believe that was, the meeting was not to be held until about 4:30 in the afternoon.

Q. You went up there that afternoon at 4:30?

A. Yes.

Q. Was it on or off working hours?

A. It was off working hours for me, yes.

Q. It was off working hours?      A. Yes.

Q. I believe your testimony is that you have never worked [1298] for the Pioneer Electric Company, am I correct in that?      A. That is right.

Q. Now, as to the time you went up there, was it before or after Christmas?

A. Oh, after Christmas.

Q. How long after Christmas?

A. Well, it was just probably two months ago, so I would say it was in January, late January.

Q. Could you give us approximately how long after Christmas, just your best guess?

A. I didn't deem it important enough to remember, but I suppose it was a month after Christmas, a month or a month and a half. I wouldn't want to go on record, because I don't know.

Q. At least it is your best recollection that it was after Christmas?

A. I know it was after Christmas, yes, sir.

Q. And possibly a month?      A. Yes, sir.

Q. Now, just so the record may be quite clear, was it before you went to the meeting with Mr.

(Testimony of Frank Doyle.)

Collins and Despol that you went to Mr. Collins and asked if you had to belong to the union?

A. No, sir, it was afterward.

Q. Beg pardon? A. It was after. [1299]

Q. It was after this meeting? A. Yes, sir.

Mr. Nicoson: No further questions.

### Redirect Examination

By Mr. Collins:

Q. Just a moment, Mr. Doyle. Do you recall any organizing activity prior to the election by either of the unions?

Mr. Nicoson: Objected to as improper redirect, nothing like that covered on cross-examination.

Trial Examiner Kent: He may answer.

A. I don't recall any organizing.

Q. (By Mr. Collins): Did you see anybody wearing any A.F.of L. buttons or any C.I.O. buttons before November 20th?

A. No, I can't recall seeing any, but I know I don't recall seeing any of them.

Q. Did anybody attempt to get you to join the union before November 20th or attempt to get you to vote for either union before November 20th?

A. Not that I remember, sir.

Q. Do you know of your own knowledge whether or not there were any members of the C.I.O. or the A.F.of L. in the plant prior to November 20th?

A. Well, I think there were some, but I didn't know definitely whether they belonged to any union or not. [1300]

(Testimony of Frank Doyle.)

Q. As a matter of fact, you did not concern yourself with union activity at all?

A. No, frankly no. I was hoping to escape that.

Mr. Collins: All right, that is all.

Recross-Examination

By Mr. Tyre:

Q. Mr. Doyle, did I understand you that you never have joined the A.F.of L.?

A. That is right.

Q. Do you recall seeing a notice on the bulletin board, Mr. Doyle, stating that all employees of the Pioneer Electric would have to join the union within 30 days?

Mr. Collins: Just a moment. Objected to as not proper cross-examination. This man is employed by the O'Keefe and Merritt Company. Anything he might have seen on the bulletin board would not tend to prove or disprove anything at issue in this case. It is not proper cross-examination, having not been gone into on direct.

Trial Examiner Kent: The answer may be taken.

The Witness: May I answer?

Trial Examiner Kent: Yes.

The Witness: As a matter of fact, I never have, because I never read those bulletins. I get out of there too fast. I am on my way home.

Q. (By Mr. Tyre): How long have you been working for O'Keefe and Merritt? [1301]

A. About 13 years.



(Testimony of Frank Doyle.)

Mr. Tyre: That is all. You may step down.

Mr. Garrett: One moment.

Q. (By Mr. Garrett): Do you know Mr. Bennett, Mr. Doyle? A. Mr. Bennett?

Q. Yes. A. Yes.

Q. Do you know Charlie Spallino?

A. Yes, I do.

Q. Who is Mr. Bennett?

A. Mr. Bennett is our refrigeration engineer.

Q. Who is the foreman in that department you worked in then? A. Mr. Cole.

Q. Who is your boss there? A. Mr. Cole.

Mr. Garrett: No further questions.

Mr. Collins: That is all.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Collins: I offer to stipulate at this time that Mr. Joe De Rose, Mr. Joe Sanchez, Mr. Percy Castro, Mr. Milton Daley, and Mr. Joe Orlatti, if called as witness to testify in this proceeding on behalf of the respondents O'Keefe and Merritt Company and Pioneer Electric Company, that they would testify to substantially the same facts as the witness [1302] who has just stepped down, both on direct examination and cross-examination, with the following difference: That none of these boys came to me and asked me if they should join either union. At this time I don't know whether they are members of the union or not. The stipulation would go slightly further than that, that these

particular witnesses were not at the meeting, that is, they were not always together, but in substance the same conversation between Mr. Despol and myself took place in their presence, or at least they will so testify.

Mr. Nicoson: You make it awfully complicated.

Mr. Collins: May we go off the record?

Trial Examiner Kent: Off the record. We will take a recess for five minutes.

(Short recess.)

Mr. Collins: I think there will be a stipulation between myself and the Board's attorney. I want to recall the witness for one more question on redirect.

#### FRANK DOYLE

a witness called by and on behalf of the respondents, having been previously duly sworn, was examined and testified further as follows:

#### Redirect Examination

By Mr. Collins:

Q. Mr. Doyle, calling your attention to this meeting you attended in my office between various employees [1303] of the O'Keefe and Merritt Company and the C.I.O.'s representative, Mr. John Despol, I am calling your attention particularly to your testimony wherein I asked you, "Do you recall anything about the Pioneer Electric"; and you stated, "Yes, it was mentioned in the meeting," or something to that effect; and I asked you what

(Testimony of Frank Doyle.)

did Mr. Despol say concerning that; his testimony, as I recall, was something to the effect that he had gone to so much expense and so on he couldn't give up. Then you testified I said I might get my clients to cover that expense. What did Mr. Despol say then?

A. As I remember it, Mr. Despol said he didn't wish to talk about it. He would talk about it later, or didn't wish to talk about it at the present time.

Q. What particular words did he use?

A. He didn't wish to talk about any money involved in the expense at this particular time.

Q. Did he use any particular expression?

A. Just that he didn't wish to discuss money matters.

Q. He used the expression he didn't want to talk about money matters? A. As I recall, yes.

Q. I see. Now, then, did I go ahead and discuss with him the question of wages?

A. Yes. I remember that a question of wages came up. They were comparing Gaffers & Sattler, I believe, or various [1304] contracts in our industry, stove industry. You said you would meet them, or better them.

Q. Meet them or better what?

A. Better the rate, rate of pay.

Q. Pay where?

A. In *comparing* industry, such as Gaffers & Sattler or Western Stove Works.

Mr. Collins: That is all.

(Testimony of Frank Doyle.)

Recross-Examination

By Mr. Nicoson:

Q. That was the only discussion about wages that occurred there at that time?

A. Yes, I believe so. That is all I remember discussing.

Q. Mr. Doyle, the question of Gaffers & Sattler was brought up by Mr. Collins; is that your recollection?

A. No, I can't recall who brought it up. I didn't pay a great deal of attention just who mentioned—I know the discussion—it entered into it somewhere. Who brought it up I am not sure.

Mr. Nicoson: No further questions.

Redirect Examination

By Mr. Collins:

Q. Did Mr. Despol ask me to submit to him the rate being paid at the Gaffers & Sattler Company?

A. Did he ask——

Q. Did he want to know what the rate was at Gaffers & Sattler? [1305]

A. I don't remember offhand.

Mr. Collins: That is all.

Recross-Examination

By Mr. Garrett:

Q. Mr. Doyle, directing your attention to the time just before the National Labor Relations

(Testimony of Frank Doyle.)

Board election that was held at the plant, did you ever see Charlie Spallino come into the refrigeration department and give any cards, application cards, to Mr. William T. Bennett?

Mr. Collins: Objected to as not tending to prove or disprove anything at issue in this case. This witness testified he is merely an employee in the stock room, I think, and that Mr. Cole is the foreman. There is no showing the conversation was in front of Mr. Cole. Besides that it is a matter not brought out on direct examination.

Mr. Garrett: I will admit——

Mr. Nicolson: I join in the objection.

Mr. Garrett: ——it is not cross-examination. But this man Spallino testified that he gave certain cards—this isn't cross-examination—but it is rebuttal and I will have to call him tomorrow, and he is now on the stand.

Mr. Collins: I withdraw my objection.

Trial Examiner Kent: The answer may be taken.

Mr. Garrett: I will call him as a rebuttal witness.

Trial Examiner Kent: We don't follow the strict rules. If questions are material to the issues I think they may [1306] be answered.

Mr. Garrett: After conceding this is not proper cross-examination and calling this man as a rebuttal witness, I ask permission to put the question again, subject to whatever objections may be made.

Trial Examiner Kent: Yes, you may.

Q. (By Mr. Garrett): Prior to the election, did you ever see Charlie Spallino come into the

(Testimony of Frank Doyle.)

refrigeration department and give any union membership application cards to yourself and to William T. Bennett?      A. No, I don't recall it.

Q. Did you ever see Mr. Charles Spallino come into the refrigeration department or any other department with any union membership application cards?      A. No.

Q. Did you ever see Mr. William T. Bennett hand any union membership application cards to Mr. Charles Spallino?      A. No, I didn't.

Q. Did you yourself ever hand any union membership application cards to Mr. Charles Spallino?

A. No, I never have.

Q. Did you ever go into the service department in company with Mr. Bennett and get any union membership application cards signed?      A. No.

Mr. Collins: That is all.

Mr. Nicoson: No questions.

(Witness excused.)

Mr. Collins: I again wish to offer to stipulate that the witnesses Joe DeRose, Joe Sanchez, Percy Castro, Milton Daley, Joe Arlotti, if they were called to testify on behalf of the respondent would testify as to those matters that occurred within my office, both on direct and cross-examination, the same as the witness Mr. Frank Doyle, who has just left the stand.

Mr. Nicoson: That is with respect to the two meetings where Mr. Despol was present?

Mr. Collins: Yes.

Mr. Nicoson: I will accept that stipulation, of

course, with the reservation we don't admit the truth or accuracy of the testimony.

Trial Examiner Kent: The record may so show.

Mr. Collins: Now I offer further to stipulate that Mr. Johnny Levascos came to my office and said he had heard about the C.I.O. bargaining to be taking place at my office. He requested permission to bring up a committee up there. I stated to him it was all right with me.

Mr. Nicoson: I will accept that with the qualification that Mr. Levascos said to you he wanted an A.F.of L. committee brought up. [1308]

Mr. Collins: Very well.

Mr. Nicoson: And you said O.K., you would leave it up to him as to who he would bring.

Mr. Collins: I will so stipulate.

Mr. Nicoson: I will stipulate to that.

Trial Examiner Kent: The record may so show.

Mr. Collins: I now offer to stipulate these same witnesses that we have just referred to, Joe Sanchez, Joe DeRose, and so forth, would testify if they were called that no one in authority in the O'Keefe and Merritt plant told them that they had to join either union; that the nearest thing they came to receiving any information about the Company's attitude toward the union would have been in one of the speeches they heard Mr. O'Keefe make in public or the speech I made in public, copies of which are already in the record.

Mr. Nicoson: May we go off the record?

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: Mr. Daley, will you take the stand?

MILTON DALEY

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows: [1309]

Direct Examination

By Mr. Collins:

Q. What is your name?      A. Milton Daley.

Q. Mr. Daley, have you ever seen any notice or contract posted in the plant of either the O'Keefe and Merritt or Pioneer Electric Company stating that you had to join the A.F. of L. within thirty days?      A. I have not.

Q. Has anyone in authority of the O'Keefe and Merritt Company ever told you that you had to join either union?      A. No.

Q. Or indicated to you a preference to join either union, other than the speech made by Mr. O'Keefe?      A. No.

Q. Did you hear his speech, incidentally?

A. Yes, I did.

Mr. Collins: You may cross-examine.

Cross-Examination

By Mr. Nicoson:

Q. You are now employed by Pioneer?

A. Yes.

Q. At the time you had the Labor Board elec-



(Testimony of Milton Daley.)

tion down there, were you employed by Pioneer or O'Keefe and Merritt? A. O'Keefe and Merritt.

Q. Do you have a bulletin board down there?

A. Sir? [1310]

Q. Do you have a bulletin board down there?

A. Yes, I have.

Mr. Nicoson: Please mark this for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 30 for identification.)

Q. (By Mr. Nicoson): I hand you a document which, for the purpose of identification, has been marked Board's Exhibit 30, and ask you to examine it and state if you have ever seen that before.

Mr. Garrett: May I see it, first?

Mr. Nicoson: I will give you a copy?

Mr. Collins: Is this in evidence?

Mr. Nicoson: Not yet.

The Witness: No, I haven't.

Mr. Collins: Off the record.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record. Any further questions of this witness?

Mr. Nicoson: No questions.

Trial Examiner Kent: Have you any questions, Mr. Garrett?

Mr. Garrett: Yes, I have, but they are not on cross. I have rebuttal questions to ask this witness.

(Testimony of Milton Daley.)

Mr. Collins. Before we get to rebuttal now, will counsel stipulate if the other four witnesses were called [1311] on direct examination their testimony would be the same as this?

Mr. Nicoson: I will, with the reservation that I do not admit the accuracy of it.

Mr. Collins: Then it will be stipulated that if Mr. Joe DeRose was called, if Mr. Joe Sanchez was called, Mr. Percy Castro and Mr. Joe Arlotti, were called, their testimony would be the same as Mr. Milton Daley, who is now on the stand?

Mr. Nicoson: Yes.

Trial Examiner Kent: You may step down. No, wait a minute, Mr. Daley.

Q. (By Mr. Garrett): What department do you work in, Mr. Daley?      A. Machine shop.

Q. Were you working in the machine shop prior to the N.L.R.B. election at the plan?

A. Yes, I was.

Q. Did anybody ever hand you forty cards which were applications for membership in the machinists' organization?      A. No.

Q. The International Association of Machinists?

A. No.

Q. Did you ever carry around forty or any other number of such cards with you in the period prior to the N.L.R.B. [1312] election?

A. No, I have not.

Q. Did you ever get any machinists' application cards from Mr. Levascos?      A. Yes, I did.

Q. What did you do with them?

(Testimony of Milton Daley.)

A. I passed them among the boys in the machine shop.

Q. All right, what else did you do with them thereafter?

A. I turned them back to Mr. Levascos.

Q. How many of them were there?

A. Well, I would say roughly about ten or twelve.

Q. When you turned them back to Mr. Levascos, were they signed or unsigned?

A. They were signed.

Mr. Garrett: That is all.

Q. (By Mr. Nicoson): When did you get those cards from Mr. Lesvascos?

A. After the day of the election.

Q. After the day of the election, and when did you return them to him?

A. I don't remember the specific day, but it was on the same day that he handed them to me.

Q. How long after the election was it?

A. Well, it was after the day that Mr. O'Keefe made his speech. I can't say exactly what date that was. [1313]

Q. Was it the day after he made his speech?

A. No, it was the same day.

Q. Mr. O'Keefe made at the time of the election or shortly thereafter, he made two speeches, didn't he? Do you recall that?

A. Yes, sir. [1314]

Q. In other words, he made a speech just the day before the election, and then about a week after the election he made another speech. Isn't that about correct?

(Testimony of Milton Daley.)

A. I can't remember whether it was just that close.

Q. It has been stipulated here that that is approximately correct, between Mr. Collins and myself, one was the day before the election, and the second was approximately a week after the election. Which one of those two speeches was it after?

A. It was the second speech.

Q. The second speech.      A. Yes.

Mr. Nicoson: No further questions.

Mr. Collins: No questions.

Mr. Garrett: No questions.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Collins: I will call Mr. McNinch.

### C. GUY McNINCH

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Collins:      - -

Q. Will you state your full name, Mr. McNinch?

A. C. Guy McNinch. [1315]

Q. Mr. McNinch, were you an observer at an election held between the A.F.of L. and the C.I.O. in the factory of the O'Keefe and Merritt Company on the 20th of November, 1945?      A. I was.

(Testimony of C. Guy McNinch.)

Q. Do you know whether or not the employees of Service Incorporated were permitted to vote in that election? A. No, sir.

Q. I didn't hear the answer.

A. They were not permitted to vote.

Q. Do you know how many employees of Service Incorporated there were? A. Not exactly, no.

Q. Was it approximately 14?

A. It was around that figure there.

Q. Do you know whether or not the employees of the Pioneer Electric Company were permitted to vote? A. They were not.

Q. Do you know whether or not Pioneer had any employees on that day?

Mr. Tyre: I will object, no proper foundation.

Mr. Collins: I am asking him if he knows.

Trial Examiner Kent: If you know, you may answer.

The Witness: Yes, sir, they had.

Q. (By Mr. Collins): How do you know there were some Pioneer employees? How do you know that they were Pioneer employees [1316] out there at that time?

A. The Pioneer was doing business.

Q. Did you ever see any badges or anything around the plant?

A. Over in their department, over there in their business.

Q. Can you estimate about how many you saw wearing Pioneer badges?

A. No. There were quite a lot of them. I can't—

(Testimony of C. Guy McNinch.)

Q. Would you say as many as 25?

A. Oh, yes.

Q. Now, then, I will show you Board's Exhibit 12-B and ask you if you have ever seen this list of names before.

A. Yes, sir.

Q. Who had this list in his hand during the conduct of the election?

A. Charlie Spallino.

Q. Did Charlie Spallino make these little red marks after the various names here?

A. Yes, sir.

Q. Just state in your own words how this election was conducted with respect to that list that you have there.

A. Well, when we were called over, I was the observer and Charlie Spallino was supposed to be, was the A.F.of L. man, and Lewie Ortega was the C.I.O. man. We went over and the lady who had charge of the Board came up to me and handed me a list, this list here, and said, "I would like to have you [1317] check these off." Charlie Spallino stood on my left-hand and he said—took hold of the list and said, "I think I know them better than you do."

Q. So he took the list. Then as the employee came up to vote, who was it that checked him off to see whether or not his name was on the list?

A. Charlie Spallino.

Q. Do you know these people by sight whose names appear on this list?

A. Not by name and sight, no.

Q. Then if somebody came up there and wanted

(Testimony of C. Guy McNinch.)

to vote, if you did not have the list in front of you, you would not know whether his name was on there or whether he was an employee entitled to vote or not, would you? A. No, sir.

Q. Did you have occasion to challenge any votes?

A. Yes, sir.

Q. Referring to—just taking any one out at random, which ones, if any, did you challenge?

A. There was a young man came up to vote and I hadn't seen him around there before, and I thought that I knew some of them, but I had never seen this young fellow before, and I asked who he was and Louie Ortega says, "He is all right. He is all right." Well, I says, "Probably, but this is an election." So the lady that conducted the vote, conducted the [1318] election, says, "Well, if he says he is all right, he is all right." But he says first thing, he says, "I want to vote C.I.O. Where do I mark it?"

"Well, here is the ballot."

"Well," he says, "I don't know where to mark it." And assuming that he could not read because he had the ballot upside down, so he takes the ballot over to the ballot box and comes back and he says, "Where did you say I should vote for the C.I.O.?" And the girl or the lady that conducted the election took the ballot and showed him where to mark for the C.I.O., and so I says, "I contest that vote." And the vote was contested and put in an envelope.

(Testimony of C. Guy McNinch.)

Q. Do you know how many votes were contested?

A. It was either 14 or 16. I would not be positive of which number it was.

Q. And all of the contested votes were eventually counted, were they not?      A. No.

Q. Do you know whether or not any of the votes that were contested were thrown out, or were they all permitted to be tallied as part of the ballot?

A. Well, this one vote eventually was put through.

Q. It was?

A. Yes. But the vote that, some of the votes that came from the—— [1319]

Q. Service Incorporated?

A. Service Incorporated were not counted. They were put back in the envelope and she took them along.

Q. Were all the other votes counted except those working for Service Incorporated?

A. A couple of them were not.

Q. Was one of the votes contested, Mr. Bill Gatone?      A. That is right.

Q. What was he? What was his job?

A. I knew him as a foreman of the welders.

Q. And did Mr. Joe Arlotti have his vote contested?      A. No, sir.

Q. He had substantially the same job, did he?

A. Well, as far as I knew he was a leadman or foreman.

Q. Did you see Mr. Levascos comparing that list



(Testimony of C. Guy McNinch.)

with the people as they came up to vote, or did Charlie Spallino take over the job?

A. Charlie Spallino.

Q. So no one ever looked at this list as the people came up to vote except Charlie Spallino?

Mr. Nicoson: I object to that as assuming a fact not in evidence, leading and suggestive, and not this witness' testimony.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Did anybody excepting Charlie Spallino, [1320] any of the watchers at the polls, excepting Charlie Spallino, look at that list while the election was going on?

A. I looked at it, but nobody had charge of it at all but him. [1321]

Q. Did you ever see Mr. Johnny Levascos look at the list? A. No.

Q. Now, what I mean to say, while the election itself was going on, that is, while people were coming up there and asking for their ballots, did anyone except Mr. Charlie Spallino have that list in their hand? A. No, sir.

Q. Did anyone besides Mr. Charlie Spallino compare that list with the man that came up and asked for a ballot? A. No, sir.

Mr. Collins: You may cross-examine.

#### Cross-Examination

By Mr. Nicoson:

Q. Mr. McNinch, there were two lists down there on the day of the election; weren't there?

A. Yes, sir.

(Testimony of C. Guy McNinch.)

Q. In other words, you had one which ran from A to L, and then that ran from M to X; is that right?      A. That's right.

Q. You were on the line that ran from A to L; isn't that correct?      A. That is right.

Q. Now, Mr. Collins a while ago showed you Board's Exhibit B-12——

Mr. Garrett: 12-B. [1322]

Mr. Nicoson: 12-B. I am sorry.

Q. (By Mr. Nicoson): Now, I will ask you, Mr. McNinch, to look at Exhibit 12-B. That is not the list that Charlie Spallino had; is it? You will notice this runs from L, M and N down to X and Y. That isn't the list you and Charlie had at all; is it?

A. Just a minute. This part that was shown to me right here is (indicating).

Q. This part here with the M on it (indicating)?

A. Yes.

Q. Now, let me show you another one, Mr. McNinch. I am not trying to trap you. I am just trying to get things straight.

This is in evidence as Board's Exhibit 12-A. Now, that runs from A down to and including K.

Mr. Collins: May the record show that has little blue checks, instead of red checks?

Mr. Nicoson: I will conduct the investigation if you don't mind.

Mr. Collins: I don't mind.

Q. (By Mr. Nicoson): That is the list you had, isn't it, Mr. McNinch?      A. No.

(Testimony of C. Guy McNinch.)

Q. Isn't it? A. No. [1323]

Q. Who had this list (indicating)?

A. I don't know.

Q. Where was Johnny Levascos when this was going on? A. I don't know.

Q. Is it your testimony that you checked the list from A to L or is it your testimony you checked another list?

Mr. Garrett: He hasn't testified he checked any list.

Mr. Nicoson: Oh, yes, he has.

The Witness: No, I didn't.

Q. (By Mr. Nicoson): Is it your testimony that the list that Charlie Spallino had is the one from A to L or from M to X? Didn't you tell me a while ago Charlie had the one from A to L? That is right; isn't it? A. Yes.

Q. I am not trying to trap you. I want to get this thing straight. Now, I ask you to look at this which is the alphabet, having names from A to K. That is the one that Charlie had; isn't it?

Mr. Collins: Just a minute. I object to the form of this question as assuming a fact not in evidence; no proper foundation laid. The witness has testified that he didn't have a list.

Mr. Nicoson: No, he hasn't.

Mr. Collins: So Charlie Spallino took the list and that is all there was to it. [1324]

Mr. Nicoson: There is no such testimony.

Mr. Collins: I don't want to take up the time of having the reporter read it back.

(Testimony of C. Guy McNinch.)

Mr. Nicoson: I am trying to get the facts from this witness, whatever they are. That is all I want.

Now, put the question. Or is there a ruling?

Trial Examiner Kent: You may take the answer.

(The question was read.)

Q. (By Mr. Nicoson): Isn't that right?

A. Yes.

Q. Now, isn't this also the way it happened: You and Louis Ortega and Charlie Spallino were put down at a table?

A. Yes.

Q. And Charlie was in the middle with this list in front of him?

A. Yes.

Q. You were on one side and Louie was on the other; is that right?

A. Yes.

Q. Which side were you on?

A. I was on Charlie's left-hand.

Q. When a voter came up there he called out his name; isn't that right?

A. Yes.

Q. And then you went through—who located the name [1325] on this list?

A. Charlie Spallino.

Q. He put a mark behind it; didn't he?

A. Yes.

Q. Now, was there any time Charlie put any paper or attempted to conceal this list from you?

A. This is the way he held the list (indicating), up like that. [1326]

Mr. Collins: I want the record to show the witness is indicating the list was all curled up in a manner that it would be impossible for anyone sitting to his left to read it.

(Testimony of C. Guy McNinch.)

Mr. Nicoson: I won't so agree to let the record show.

Mr. Collins: Let the witness state how he held it.

The Witness: Any time I wanted to see any particular—whether a man was there or not, I had to ask to see the names.

Q. (By Mr. Nicoson): That is right. The list was always available whenever you wanted to look at it?

A. Not unless I wanted—asked for it.

Q. When you asked for it, was it ever denied you? You couldn't see it? A. No.

Q. Louie Ortega was on the other side?

A. Yes.

Q. He also asked sometimes to look at the list?

A. Yes.

Q. You both worked the same? A. Yes.

Q. And Charlie made the marks as they came along? A. Yes.

Q. With respect to this fellow who came up there and said he wanted to vote a CIO ballot, did he give his name at all? [1327]

A. No. I can say this, though: He was a Mexican because the lady that conducted the election had to interpret some of the things he said.

Q. He came up to her and after she interpreted, she told you what he said? A. Yes.

Q. She told you he said he wanted to vote for the CIO and which square should he put his mark?

A. Yes.

(Testimony of C. Guy McNinch.)

Q. Thereafter she took him over to the booth?

A. No, she didn't.

Q. Marked it right in front of you?

A. He went over to the booth and came back the second time.

Q. And still didn't understand?

A. And still didn't understand.

Q. What further was said to him?

A. Louie Ortega told her he wanted to vote CIO, see.

Q. Yes.

A. And she asked him in Mexican—I couldn't understand it because Louie Ortega talks Mexican. That is what she pointed right on the ballot. Nothing was said about voting for AFL.

Q. Then what did he do with it?

A. He went over to the ballot box and came back to it and I contested the vote. [1328]

Q. Then they sealed it up in a little envelope?

A. Yes.

Q. And put that little envelope in another envelope; didn't they?      A. Yes.

Q. On the outside of the big one they wrote this fellow's name; isn't that correct?

A. She wrote something on it, I didn't see it.

Q. What was done with that after they sealed it in both of those envelopes?

A. The lady took care of it.

Q. Are you sure about that? As a matter of fact, it was put in the ballot box, wasn't it?

A. I am not sure what became of it. The bal-

(Testimony of C. Guy McNinch.)

lots were counted and I know they all come out together when the ballots were counted.

Q. You were in there when they opened up the ballot box? A. Yes.

Q. And poured them out on the table?

A. No, sir.

Q. Where did they put them?

A. They were in the box back there. One man picked them out and looked at them and brought them out to her, and she opened them.

Q. Laid them out in front of all the people while they [1329] were counting them?

A. Yes.

Q. The envelopes were all put up in a little pile? A. Yes.

Q. There was more than one of those challenges in there? A. Yes.

Q. I think you said there were about 14.

A. 14 or 16.

Q. They were all put up in a little pile?

A. Yes.

Q. Isn't it a fact that that envelope was not opened? A. Pardon?

Q. Isn't it a fact that the envelope of this Mexican was not opened?

A. Couldn't tell who it was after it was over, they opened it.

Q. Is it your testimony they opened it in your presence? A. Yes.

Q. Now, can you possibly tell us what the name of that man was? A. No, sir.

(Testimony of C. Guy McNinch.)

Q. Could you go down the list of this Board's Exhibit 12-A and pick out the man's name?

A. No.

Mr. Nicoson: I can't release this witness because I [1330] have to go and get the 14 envelopes to show they are still all there.

Mr. Collins: What is the purpose of the question? Maybe I will stipulate and we can get on. Off the record.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: While we are waiting, Mr. Nicoson, could I ask the witness one question I have on redirect?

Mr. Nicoson: Yes.

Mr. Collins: Mr. McNinch, at the time that you were seated there beside Charlie Spallino did you know that he was secretly working for the CIO, instead of a watcher for the AFL?

The Witness: No, sir.

Mr. Collins: That is all.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: Well, your Honor, I don't know whether I win or lose because I am informed all the challenged ballots have been destroyed, so I don't know whether they were counted or not. I have no further questions.



(Testimony of C. Guy McNinch.)

Mr. Collins: Do you have any questions of this man, Mr. Garrett? [1331]

Mr. Garrett: Yes, I have some questions. But I don't think I ought to begin with cross-examination at the hour of 5:00 o'clock, unless I am required to.

Trial Examiner Kent: No, unless it is one or two questions.

Mr. Garrett: No. Are you able to come here again tomorrow morning, Mr. McNinch?

The Witness: Yes, sir.

Trial Examiner Kent: We will recess then until 9:30 tomorrow morning.

Mr. Collins: May the witnesses Mr. Fred Rotter, Mr. Joe DeRose, Mr. Sanchez, Mr. Doyle, Mr. Orlandi, Mr. Castro, be excused?

Trial Examiner Kent: They are the ones covered by the stipulation?

Mr. Collins: Yes.

Trial Examiner Kent: They may be excused.

(Whereupon, at 5:00 o'clock p.m. Tuesday, March 26, 1946, the hearing was adjourned to Wednesday, March 27, 1946, at 9:30 o'clock a.m.) [1332]

Wednesday, March 27, 1946

9:50 o'Clock A.M.

Trial Examiner Kent: We might proceed.

Before we begin, Mr. Nicoson, I believe you told me Mr. Schullman called up and asked you to give me the message he wouldn't be here today.

Mr. Nicoson: That is correct.

Trial Examiner Kent: The record may so show.

Mr. Collins: Mr. McNinch was on the stand. Does anybody want to cross-examine him?

Trial Examiner Kent: Mr. Garrett has some further questioning. When he was excused last night he was excused for further questioning this morning by Mr. Garrett.

Mr. Collins: We might take somebody else out of order.

Trial Examiner Kent: I think that might be a good idea because Mr. Garrett is not here as yet.

Mr. Collins: I will call Mr. Durant.

#### WILBUR G. DURANT

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

Mr. Collins: I believe I have a stipulation from Mr. Nicoson, the Board's attorney, that these exhibits that were marked for identification may be introduced in evidence without further foundation being laid. Is that true?

Mr. Nicoson: That is correct. [1337]

Mr. Collins: I now wish to offer Respondent's Exhibits 4, 5, 6, 7 and 8, heretofore marked for identification, in evidence at this time.

Trial Examiner Kent: You might restate the nature of those exhibits. I believe you did at the time. I haven't my notes for that date here.

Mr. Collins: Respondent's Exhibit 4 is the sales

(Testimony of Wilbur G. Durant.)

and use tax returns of the Board of Equalization, which is a form of tax imposed by the State of California on the sale and use of various materials used in manufacturing and resale.

These don't purport to be all the returns, but they are sample returns over a period of years of the Pioneer Electric Company.

The quarterly returns of the California Department of Labor. These are the records whereby the State of California—whereby the employer deducts from the employee and contributes a definite percentage to an unemployment insurance plan in this State.

Mr. Nicoson: Is that Exhibit 5?

Mr. Collins: Yes, that is Respondent's 5. This does not purport to be all the records. There may be one or two returns missing, or something of that nature, but it is substantially all the records of the Pioneer Electric Company with that exception to date.

None of the current records are being filed here because [1338] my client, Pioneer Electric needs those to currently operate their business and make the employment tax returns.

Social Security returns for the Department of Internal Revenue. I feel sure the Examiner and Board will know what they are. They are for the same concern for a substantial period of the time they have operated. Likewise, I am not using the current returns for the reason heretofore stated,

(Testimony of Wilbur G. Durant.)

they are now being used. If you deem it material in my case, I can bring you the current returns.

Mr. Nicoson: Is that Exhibit 6?

Mr. Collins: That is Respondent's 6. What is your disposition on that matter, Mr. Trial Examiner?

Trial Examiner Kent: Well,—

Mr. Collins: Just a moment. Maybe I can settle this.

Q. (By Mr. Collins): Mr. Durant, is the Pioneer Electric Company at the present time keeping separate Social Security returns?

A. Yes, they are.

Q. Separate quarterly returns of the California Department of Employment?      A. Yes.

Q. Separate returns of sales and use tax returns for the Board of Equalization?      A. Yes.

Q. You make a separate income tax report for the Pioneer [1339] Electric Company?

A. Yes.

Mr. Collins: Do you deem it advisable to have the evidence themselves brought in?

Trial Examiner Kent: Does counsel have any statement to make prior to the consideration?

Mr. Nicoson: If that is his purpose, why, nothing occurs to me that requires the current returns to be filed at this time.

Trial Examiner Kent: I doubt if they are particularly relevant and material, in view of the Board's decision in the Simmons Engineering case.

However, they may be received as rejected exhib-

(Testimony of Wilbur G. Durant.)

its, so that gives you the benefit of having them accompany the record should my ruling be wrong.

(The documents heretofore marked for identification as Respondent's Exhibits Nos. 4, 5, and 6, were rejected.)

Mr. Collins: I now offer Respondent's Exhibit No. 7, which are the photostatic copies of policies of insurance covering Workmen's Compensation for the Pioneer Electric Company from the inception to date, including the current one.

Respondent's Exhibit 8 is our letters from the War Department Office of the Undersecretary, Washington, D.C., Price Adjustment Board, and other miscellaneous letters from [1340] the Army Service Forces dealing with the question of re-negotiations for the Pioneer Electric Company, re-negotiating their profits and getting some of the money back from the government. I wish to offer all of these in evidence at this time.

Mr. Nicoson: I will waive the foundation. I will object to them on the ground they are immaterial and irrelevant.

Mr. Collins: The materiality and the relevancy of these exhibits, from the standpoint of my client, Pioneer Electric Company, is to show that it has from the very beginning kept entirely separate records and has, in fact, been a separate legal entity.

These records, along with the Board's exhibits, particularly the Board's Exhibit No. 22 and the various articles of incorporation—I don't recall

(Testimony of Wilbur G. Durant.)

their numbers right now—indicate that at the present time only 29 per cent of the stock of the O'Keefe and Merritt Company is represented by partners in the Pioneer Electric Company. That is to say, partners in the Pioneer Electric Company at no time have owned more than 29 per cent of the stock of the O'Keefe and Merritt Corporation. That is, at the present time when there are more people from O'Keefe and Merritt in it than there were when it originally was formed in 1942.

I, therefore, believe that these exhibits are highly material to my case. They do, in fact, establish that it is a separate legal entity and there was never any Board election held for the benefit of these employees;

That they were employees in existence all of the time who never had a chance to vote and therefore my client, Pioneer Electric Company, would have had the right to have signed a contract with any union they wanted to at any time prior to an election in their plant.

Trial Examiner Kent: They may be received as rejected exhibits.

(The documents heretofore marked as Respondent's Exhibits Nos. 7 and 8, for identification, were rejected.)

Trial Examiner Kent: They will accompany the record. Should my ruling be erroneous they will be there.

Mr. Garrett: These are rejected exhibits?

(Testimony of Wilbur G. Durant.)

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Q. (By Mr. Collins): Mr. Durant, when did you begin any association with the O'Keefe and Merritt Company?

A. About September, 1941.

Q. Did you come to them with some form of a proposition or did they hire you?

A. I went to them first with a contractual arrangement of my own. [1342]

Q. Will you state to the court just what this arrangement was? Not the terms of the arrangement, but what you had to sell O'Keefe and Merritt, if anything?

A. A combination of our engineering and other companies' engineering and their money to finance, to satisfy the government we could do a two million dollar job.

Q. Did you have any kind of a war contract or anything of that nature that you had negotiated yourself before you came there?

A. That was before the war, but it was a military requirement.

Q. What was this?

A. The building of an ordnance generator set, power unit. You say when or what?

Q. What was it? I want to know how you originally got started with O'Keefe and Merritt?

(Testimony of Wilbur G. Durant.)

A. Briefly, our company didn't have the finance to——

Q. Who was "our company"?

A. Frazier Wright Company. They didn't have the financial backing to satisfy the government we could perform on a \$2,000,000.00 engine generator set contract.

Q. What did you do with that?

A. We bid the job as a joint bid between the company and O'Keefe and Merritt, and were awarded the contract.

Q. When you first came in with O'Keefe and Merritt, you came [1343] in with a contract of your other company and came in there to work it out at their plant?      A. Right.

Q. You didn't go to work as an employee?

A. No, not then.

Q. So then when the war started, what was your job with O'Keefe and Merritt?

A. After the war started I went to work directly for O'Keefe and Merritt as chief engineer.

Q. Did you have any other connections outside of O'Keefe and Merritt Company as an engineer?

A. No, not at this time.

Q. What has been your average income during the last two or three years?

Mr. Garrett: I don't think anyone ought to be required to answer a question like that. I don't like to take Mr. Durant from his attorney. I think that is most embarrassing, if you ask anyone on the record a question like that in a case like this.



(Testimony of Wilbur G. Durant.)

Mr. Collins: I agree with Mr. Garrett, that it is an embarrassing question. However, Mr. O'Keefe testified this man made between \$175,000.00 and \$200,000.00.

Mr. Garrett: I am going to object to it as being immaterial. I don't see how it has any bearing on the issues in this case. [1344]

Mr. Collins: I want to show by this line of questioning this man is not an employee of O'Keefe and Merritt. He is an independent contractor and makes a lot of money. He is independent of O'Keefe and Merritt. They need him; he don't need them.

Mr. Garrett: I think Mr. O'Keefe's testimony established that. No doubt Mr. Durant's ears were burning while Mr. O'Keefe was testifying. He thought Mr. Durant was a very valuable man, a man that could make a high rate of——

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Do you have any objection to stating your income or an estimate of it, a rough estimate, for the record?

A. It is better than \$100,000.00 a year.

Q. Mr. Durant, how much money did you put into the Pioneer Electric Company as your contribution to capital?

A. \$30,000.00.

Q. How much did Mr. R. J. Merritt put in?

A. \$30,000.00 is one-fourth of the original capitalization. And six others put in one-eighth. \$30,000.00 is one-fourth of the original capitalization, and six others were one-eighth.

(Testimony of Wilbur G. Durant.)

Q. I am afraid you are going to have to explain the answer. I don't understand it and I am afraid the Trial Examiner won't.

A. Six people owned one-eighth each. That made three-fourths. [1345] I owned the other one-fourth. All related to \$30,000.00.

Q. How much did R. J. Merritt put in?

A. Each put in \$15,000.00.

Q. How much did Lewis Boyle put in?

A. \$15,000.00.

Q. Marion Jenks?                    A. \$15,000.00.

Q. W. J. O'Keefe.                    A. \$15,000.00.

Q. L. G. Mitchell.                    A. \$15,000.00.

Q. I understand that R. J. Merritt put in the same amount you did.                    A. No.

Q. He put in how much?                    A. \$15,000.00.

Q. You had twice as much interest as anyone else in this partnership?                    A. Yes.

Mr. Nicoson: Any one other individual.

Q. (By Mr. Collins): As any other individual in the partnership?                    A. That is right.

Q. You are the active manager and control of the operation?                    A. That is right. [1346]

Q. Without going into the nature of outside activities that you intend to engage in, unless you want to tell us at this time, do you now contemplate doing other things than the manufacture of gas ranges or any product O'Keefe and Merritt made prior to the war?                    A. Yes.

Q. Are you able to give an estimate of how

(Testimony of Wilbur G. Durant.)

much money is going to be required to engage in this activity or any activity you have in mind.

A. Approximately \$400,000.00.

Q. When you used the word "you" did you mean yourself personally or the Pioneer Electric Company?

A. No, the Pioneer Electric Company.

Q. Have you already—without telling me what you have done in that connection—initiated this project? Has the Pioneer Electric Company initiated this project you have now testified to?

A. Yes. [1347]

Q. Do you now do anything in the O'Keefe and Merritt factory for the O'Keefe and Merritt Company, other than the manufacture of gas ranges?

Mr. Garrett: I think that question is a little bit ambiguous.

The Witness: Yes, reframe the question so I answer it correctly.

Q. (By Mr. Collins): Do you make any faucets in the foundry?

A. I am not sure whether we are or not; could be.

Q. What products are you manufacturing for O'Keefe and Merritt? A. Gas ranges.

Q. Are you manufacturing generators there?

A. Yes, we are.

Q. Are you selling them yourself?

A. Yes.

Q. By "you" you understand that to mean Pioneer Electric Company?

A. That is right; we are.

(Testimony of Wilbur G. Durant.)

Q. Now, calling your attention to the 20th of November, 1945, do you recall a wall that separated that part of the O'Keefe and Merritt factory from the part that was at that time leased to the Pioneer Electric Company?      A. Yes. [1348]

Q. Was that wall up or down, as far as you can recall, the 20th of November, 1945?

A. It is so close to that date, as to whether it was up or down, I can't say. It would be a matter of a week one way or the other, I would think.

Q. When did the Pioneer Electric Company or yourself, as an individual, first have any conversation with the O'Keefe and Merritt Company relative to the manufacture of gas ranges?

A. Well, relative—

Mr. Nicoson: I think I am going to have to object to that as being a double-barreled question. I will have to ask counsel to separate which is which.

Mr. Collins: Very well.

Q. (By Mr. Collins): When did you first have any conversation with the O'Keefe and Merritt Company relative to the manufacture of any of their products?

A. Well, virtually since 19—since the inception of Pioneer, about 1942.

Q. When did you first have any conversation with the then partners of the Pioneer Electric Company relative to admitting you to the partnership?

A. 1942.

Q. 1942?      A. That is right.

(Testimony of Wilbur G. Durant.)

Q. Frankly, from the beginning then you were trying to get [1349] into the partnership and make gas ranges? A. That is right.

Q. Now, will you relate the conversation that you had with any partner of the Pioneer Electric Company relative to admitting you to partnership, giving us the time and place and the persons present?

Mr. Tyre: I am going to object to this, your Honor. It calls for hearsay and is not binding upon the CIO, at least. I don't think it is binding on the Board. It is a conversation between persons, neither of whom are binding to the CIO or Board.

Mr. Collins: In Mr. Tyre's position the CIO representative should have been present at this conversation four years ago?

Mr. Garrett: There weren't any CIO representatives present at a great many of the conversations that have been testified to here.

Mr. Nicoson: I think, in the interest of clarity—

Trial Examiner Kent: I will take the answer.

Mr. Nicoson: —he ought to identify who was present and who made the statements.

Trial Examiner Kent: Yes. With that limitation I think that the testimony may be material. But I think the parties should be identified.

Q. (By Mr. Collins): Who did you talk to in the Pioneer [1350] Electric Company?

A. I have talked to everybody in the Pioneer

(Testimony of Wilbur G. Durant.)

Electric Company and the O'Keefe and Merritt Company for four years about this thing. I can't identify a time or place.

Q. Do you recall any particular conversation that you ever had with Mr. O'Keefe of the O'Keefe and Merritt Company?

A. I can give you the conversation but I can't recall the time or place there. They are old, they are between two and three years old.

Q. Very well, give us a conversation.

Mr. Tyre: May I have an understanding I am continuing to object to this line of testimony concerning conversations between the witness and Mr. Daniel P. O'Keefe?

Trial Examiner Kent: Yes. The objection may go to the line.

The Witness: We organized the Pioneer Electric Company for various purposes in 1942. I have consistently operated the company for the betterment of both O'Keefe and Merritt and Pioneer. As a manufacturing company we plan, at the close of the war, to take on the operation of the manufacture for O'Keefe and Merritt Company, or any other purpose, as far as that goes.

Trial Examiner Kent: I rather gathered from Mr. O'Keefe's testimony that O'Keefe and Merritt handled the sale and laid out the production schedule for Pioneer. [1351]

The Witness: That is right. It has been the purpose of O'Keefe and Merritt Company to carry on, by reason of their name, the sales of the com-

(Testimony of Wilbur G. Durant.)

pany. The manufacture is secondary to the sales in that case. Whereas we have no sales or intention of sales; we as Pioneer. We are strictly manufacturers.

Trial Examiner Kent: I think Mr. O'Keefe also testified—

Q. (By Mr. Collins): You mean by that you don't intend to sell anything at all?

A. We will sell it, but not actively as a sales company.

Q. Do you mean by that you are going to sell—or you are not going to sell generators or anything else?

A. We will sell them, but not as you might consider—as I would, rather—an active sales company. For example, we have one salesman; that is all we need.

Q. Does this one salesman sell gas ranges?

A. No.

Q. Your one salesman is going to sell other products you manufacture? A. Yes.

Q. O'Keefe and Merritt sales organization will sell the gas ranges? A. That is right.

Q. Do you as an individual have any outside activities? Are you manufacturing anything or have you any contracts on the outside of either O'Keefe and Merritt or Pioneer at the [1352] present time? A. Yes.

Q. What are these activities, if you care to state them?

A. I am president of the Sales Engineering Company.

(Testimony of Wilbur G. Durant.)

Q. What does that concern manufacture?

A. They are sales representatives entirely separate from either Pioneer and O'Keefe and Merritt, but in engineering line such as valves and that type of equipment.

Q. Do you have any springs or upholstering equipment that you are now manufacturing or contemplating manufacturing?

A. I own one-third of a company that is developing automatic spring machine, and we have a patent on the springs.

Q. Now, when you had these conversations with O'Keefe and Merritt or Pioneer Electric concerning admitting you to their partnership and giving Pioneer permission to manufacture gas ranges, were you able to point out any advantages that might accrue to the O'Keefe and Merritt Company, as the result of this association? I am referring specifically now to either the efficiency of the operation, tax savings, OPA ceilings and things of that nature?

A. Yes, we have a different class of quality manufacture which we have had to have during the war. We afford somewhat of a tax saving, about 12 per cent, on certain items. And we have, as a company not engaged before the war, we have certain OPA—our job with the OPA is easier for the reason we [1353] have no past history before the war on certain items.

Q. Have your tax consultants told you there are OPA and tax savings by virtue of the operation?

A. Yes.



(Testimony of Wilbur G. Durant.)

Q. Was the Pioneer Electric Company able to operate more efficiently? Did you use that as an argument of any kind to get yourself into this deal?

A. Yes. I would say I would operate the Pioneer Electric Company more efficiently than O'Keefe and Merritt has operated it.

Q. Did O'Keefe and Merritt attempt to have their generators built outside before the Pioneer Electric was organized, and the inception?

A. Yes, we did have them built.

Q. Did that cost more or less than Pioneer could do it for? A. It cost more than double.

Q. Did you get efficient delivery before Pioneer took over?

A. Not to satisfy the war requirement.

Q. Did the O'Keefe and Merritt Company have any engineers at all working for them when they were manufacturing gas ranges prior to the war?

A. One.

Q. One. Does the Pioneer Electric Company have any engineers working for it now?

A. Yes. [1354]

Q. How many? A. About 10.

Q. Has the Pioneer Electric Company installed any new or different method of manufacturing the gas ranges than were used by O'Keefe and Merritt prior to the war?

A. Some, but we will, of course, have many more. In other words, we have just started manufacturing gas ranges.

Q. Were there any changes, or are there any

(Testimony of Wilbur G. Durant.)

changes that will be made—strike that. Now, then, as of February 4th, the day you took over the operation of the O'Keefe and Merritt's factory, did you at that time put any changes into effect? That is, the very minute you took over?

A. Did we?

Q. Yes.

A. Oh, about February 6th I left and since then have been home less than 10 days, since February 6th. I am not too familiar with how many changes we have made. Of course, they have been made.

Q. You contemplate making changes?

A. Sure; that is right, we do.

Q. I will ask you this question: Would it be physically possible for you to change the methods of making the ranges the minute you took over, or the minute you take over? Asking you as an engineer, is it physically possible to do that?

A. No, it would not be. [1355]

Q. How long do you estimate it will take for you to put in efficient methods and so forth that you, as an engineer, have in mind, from the date of February 4th?

A. Take us the better part of this year.

Q. The balance of this year? A. Yes.

Q. Do you know whether or not O'Keefe and Merritt was manufacturing gas ranges before you took over on—were they manufacturing gas ranges on the 28th of January? A. No.

Q. Were you manufacturing gas ranges on the 4th of March—I mean on the 4th of February?

(Testimony of Wilbur G. Durant.)

A. No. We were processing parts, but we weren't manufacturing gas ranges.

Q. Were there any appreciable number of parts being manufactured or processed by O'Keefe and Merritt Company prior to February 4th when you took over?

A. Yes; the appreciable part being 25 per cent.

Q. 25 per cent of the parts being manufactured?

A. Yes.

Q. Did you at that time, knowing that you were going to take over this operation, within a matter of months, did you have anything to do with getting that type of work started in the O'Keefe and Merritt factory, you or your staff, your engineers?

A. Prior to that time very little.

Q. Very little. When did you first know that you were going to get the deal to be taken into the Pioneer Electric Company and a contract with O'Keefe and Merritt to manufacture?

A. Right after the war.

Q. Right after the war?

A. Yes; be last year.

Q. Did you ever tell anybody around O'Keefe and Merritt plant you were going to be admitted to the partnership and the partnership was going to make gas ranges? A. Did I tell anybody?

Q. Yes. A. The principals.

Q. The principals. Do you know whether or not there was a general rumor around the factory that Pioneer was going to take over the manufacture of the gas ranges?

A. Yes, I think there was.

(Testimony of Wilbur G. Durant.)

Q. That was right after the close of the war?

A. That was in the months of November and December, at least.

Q. Did any representative of the National Labor Relations Board ever ask the Pioneer Electric Company whether or not they would consent to have their name placed on a ballot between the CIO and the AFL? [1357]

A. Not to my knowledge.

Q. Or did any representative of the National Labor Relations Board ever ask the Pioneer Electric Company to permit their employees' names to be added to any list of people voting in a National Labor Relations Board conducted election?

A. Not to my knowledge.

Q. Did any representative of the C.I.O. ever ask you or any other representative of the Pioneer Electric Company for permission to bargain for the employees of the Pioneer Electric Company?

A. Not to my knowledge.

Q. Did they ever ask you that?      A. No.

Q. Did any of your associates ever tell you they had been approached by the C.I.O.?      A. No.

Q. After the election was conducted and this rumor you are talking about was current, did any representative of the C.I.O. ever ask you for permission to bargain for those employees of yours?

A. No.

Q. Has any representative of the C.I.O. ever contacted you with reference to representing these employees to date?      A. No.

(Testimony of Wilbur G. Durant.)

Q. Have they contacted your attorney or anybody else in connection [1358] with your organization you haven't heard of? A. No.

Q. Is that right? Yes or no?

A. That is right. I have not heard of it.

Q. Now, prior to November 20, 1945, did you ever see any A.F.L. buttons on any of the employees of the Pioneer Electric Company?

A. I think so.

Q. After the election did you ever see any buttons of the A.F.L. on employees of the Pioneer Electric Company? A. No.

Q. Along about the 1st of December and thereabouts in 1945, did you ever see any buttons on the employees of the—strike that. Now, I am now referring to the employees of the O'Keefe and Merritt Company as being those prior to February 4th.

A. Yes.

Q. And Pioneer Electric Company took over after February 4th. Don't confuse my question in your mind. I want you to distinguish between O'Keefe and Merritt and Pioneer Electric employees. With that in mind, when did you first begin to notice A.F.L. buttons circulating around the factory there, either of O'Keefe and Merritt or Pioneer employees?

A. Well, there had been all the time I have been there some A.F.L. buttons in the plant. [1359]

Q. Both in the Pioneer and the O'Keefe and Merritt? A. Yes.

Q. Now, is it your testimony there were A.F.L.

(Testimony of Wilbur G. Durant.)

buttons on the employees in the Pioneer Electric Company prior to the election in November of 1945?

A. Yes, we had a couple of hundred employees.

Q. Is it your testimony now that there were or were not buttons of the A.F.L. on employees of the Pioneer Electric Company prior to February 4, 1946? What I am getting at is how did you know whether or not the A.F.L. had a majority of employees.

Mr. Tyre: Just a minute.

Mr. Nicoson: Just a minute. You have been doing pretty good up to now. We can't let you testify all morning. We want to find out what this witness knows.

Q. (By Mr. Collins): Did any representative of the American Federation of Labor ever contact you with reference to bargaining for the employees of the Pioneer Electric Company? A. Yes.

Q. When did they first contact you to the best of your recollection?

A. About the 1st of February.

Q. About the 1st of February. Did you have any telephone—

Trial Examiner Kent: That is this year?

The Witness: Yes. [1360]

Q. (By Mr. Collins): Did you have any telephone communications from representatives of the American Federation of Labor before the 1st of February of this year?

(Testimony of Wilbur G. Durant.)

Mr. Nicoson: Objected to unless counsel lays a better foundation.

The Witness: No.

Q. (By Mr. Collins): What was the answer?

Mr. Nicoson: I move the answer go out for the purpose of interposing an objection. Anyone with the A.F.L. would take in something like five or six, twelve million people. That is a little indefinite, I think, even for our purposes.

Trial Examiner Kent: The answer is stricken at the request of counsel.

Mr. Collins: Was the objection ruled on?

Trial Examiner Kent: Yes. It was moved it might be stricken——

Mr. Nicoson: I now interpose an objection because there is no sufficient foundation laid, no parties established that were present, or time or place.

Trial Examiner Kent: I will sustain the objection and strike the answer.

Q. (By Mr. Collins): When you had this meeting with the representatives of the American Federation of Labor, will you state where it was held, when it was held, and who was present? [1361]

Mr. Nicoson: That is objected to as assuming a fact not in evidence. He never testified he had a meeting with A. F. of L. representatives.

Trial Examiner Kent: This conversation you had about the 1st of February that you now testified to——

Q. (By Mr. Collins): Now, are you certain it

(Testimony of Wilbur G. Durant.)

was the 1st of February or could it have been one way or the other a little bit?

A. I am certain I was here the last week of January.

Q. You are certain you were here the last week of January?

A. I am certain I wasn't here any other time.

Q. It was sometime during the last week of January?      A. That is right.

Q. Now, was there a meeting or just a conversation?      A. It was a meeting.

Q. Where was this meeting held?

A. Your office.

Q. To the best of your knowledge who was present?

A. There were about 15 present, none of whom I knew, excepting you.

Q. The other 13 or approximately 13, what did they identify themselves as to you?

A. All unions.

Q. What did they say to you?

A. They satisfied me that—— [1362]

Mr. Nicoson: Just a minute.

Q. (By Mr. Collins): State what they said.

Mr. Nicoson: I also insist the witness state who said what.

The Witness: Each A.F.L. organizer, after introduction, I asked each if they had a contract drawn up. I then satisfied myself we had a very high percentage of A.F.L. men in the plant. They assured me we were also—you did, also,—and I be-



(Testimony of Wilbur G. Durant.)

lieve in that one meeting I signed all their contracts.

Q. (By Mr. Collins): Now, then, had you authorized me prior to that date to negotiate with the A.F.L.?

A. Yes.

Q. Now, what means did you personally—don't say what I did—what did you personally do to satisfy yourself that the A.F.L. had a majority of the employees in the Pioneer Electric Company?

A. I talked to a number of the older men in the plant. I took their word for it.

Q. Did you look around to see if you saw any buttons out there?

A. Yes.

Q. What did you see?

A. Well, I didn't see anything but A.F.L. buttons.

Q. That was in the last week of January you are referring [1363] to now?

A. That is right.

Q. Did you talk to any of the employees of the Pioneer Electric Company who had never been anything but employees of the Pioneer Electric Company, some of these older men you are talking about?

A. No, I talked to O'Keefe and Merritt employees.

Q. Did you look to see if any of your own employees—by that I mean employees of the Pioneer Electric Company—did you look to see if any of them had buttons on at this time?

A. No.

Q. Didn't you look around to see if your own employees were A.F.L.?

(Testimony of Wilbur G. Durant.)

A. By that time we had relatively few employees, 12 or so, I would say. I don't believe any of those belonged to any union; that is, those that were remaining at that time.

Q. As a matter of fact, you weren't concerned with unions at all; is that the case?

A. That is right.

Q. Did you have any idea at that time that you were going to be in violation of any National Labor Relations Board rulings?      A. No, sir.

Q. What was your reason for getting yourself into this [1364] Pioneer Electric Company and starting it up like this?      A. Profit.

Q. You wanted to make money?      A. Sure.

Q. Is that why you are in it now?      A. Yes.

Q. Did you have any intention of circumventing any National Labor Relations Board election?

A. No, I did not.

Q. Did you have any intention of depriving the C.I.O. of their right to bargain for your employees?

A. No.

Q. Are you willing at this time to bargain with the C.I.O. if they win a National Labor Relations Board election?      A. Yes.

Q. Are you willing, on behalf of the employees of the Pioneer Electric Company, to consent to an A.F.L. vs. C.I.O. election?

A. I am willing for an entirely new election; no more arguments.

Q. Do you have any favorites between these two, the A.F.L. or the C.I.O.?      A. Personally, no.

(Testimony of Wilbur G. Durant.)

Q. Now, I believe there has been introduced in evidence here as one of the Board's exhibits—without getting right down [1365] to the number, Mr. Durant,—a letter between the O'Keefe and Merritt and the Pioneer Electric Company where Pioneer was willing to rebate to O'Keefe and Merritt 10 per cent of the profit. Are you familiar with this (Indicating)?

A. Without reading it I am familiar with it.

Q. Was Pioneer Electric Company renegotiated by the United States Government annually or semi-annually, or something of that sort?

A. Annually.

Q. Was the O'Keefe and Merritt renegotiated annually? A. Yes.

Q. These are the contracts that you as a chief engineer and the one who went out and got them actually are familiar with them; is that right?

A. Right.

Q. Why did O'Keefe and Merritt insist that Pioneer give them back all the money over 10 per cent? Why didn't they let Pioneer keep all that money?

A. As a prime contractor we had to draw a reasonably tight arrangement with any company as we could, that was similar to any others.

Q. Did O'Keefe and Merritt limit the profit of other sub-contractors not to exceed 10 per cent?

A. Yes, if we could.

Q. If you could get the material from them?

A. Yes.

(Testimony of Wilbur G. Durant.)

Q. Did a profit not to exceed 10 per cent of the total business run into a substantial amount of money?

A. Did the profit not to exceed 10 per cent?

Mr. Collins: Strike that.

Q. (By Mr. Collins): Did 10 per cent of the total business done by Pioneer run into a substantial amount of money?

A. It would be 10 per cent of \$2,000,000.00 or \$3,000,000.00, yes.

Q. So they get 10 per cent of \$2,000,000.00 or \$3,000,000.00 for their operation?

A. That is right.

Q. If you hadn't limited the margin to 10 per cent, what would the percentage of profit run into if you could estimate?

A. We would have had to work a flat price arrangement on a lot of parts we did not.

Q. In other words, the profits would have gone all out of reason?

A. Not necessarily, but we would have hardly shown evidence of good faith as a prime contractor without some limitation.

Q. As far as the government renegotiation is concerned?      A. Yes.

Q. All these contracts I have offered as exhibits were scrutinized by the United States Government?

A. Yes.

Q. And all other government agencies, state and federal?

(Testimony of Wilbur G. Durant.)

A. Yes. The government lived with us for about four years.

Q. People from the Army and Navy?

A. They lived with us for about four years; they still are.

Q. Have any of these government agencies challenged the separation of the entities, that is, have any of the government agencies challenged the fact that Pioneer is one company and O'Keefe and Merritt is another?

A. No. They have ascertained they are different.

Q. They looked into those things?

A. Right.

Q. Does the Pioneer Electric Company have stove mounters working for it now? A. Yes.

Q. Did the O'Keefe and Merritt have any stove mounters working for them at any time since you have been connected with them?

A. As union stove mounters?

Q. No. Stove mounters. Have they built any stoves?

A. No, we haven't built any stoves since I have been connected with it.

Q. Did O'Keefe and Merritt Company have any Teamsters working for them on the 20th of November, 1945, or were they working for another concern? [1368]

Mr. Nicoson: Just a minute. Just a minute. That is not quite kosher.

Mr. Collins: Very well, I will reframe the question.

(Testimony of Wilbur G. Durant.)

Q. (By Mr. Collins): Do you know whether or not O'Keefe and Merritt had any teamsters working for them on November 20th? A. No.

Q. You don't know? A. No.

Q. Does the Pioneer Electric Company have any generator business at the present time?

A. Yes.

Q. Who are you selling?

A. Where are we?

Q. Yes. Who do you sell to generally?

A. Dealers and distributors and exporters and the government.

Q. At the time you had this meeting in my office wherein the A. F. of L. representatives were present that you have discussed with me, did you testify as to the methods of proof they showed you all you can now remember?

Mr. Nicoson: I object to that as leading. I think it is quite unfair.

Q. (By Mr. Collins): Getting back to the meeting with the various A.F.L. representatives in my office on or about the last week of January, 1946, will you relate what proof, if [1369] any, that the various A.F.L. locals presented to you they represented the majority of the contemplated employees of the Pioneer Electric Company?

Mr. Nicoson: Object to that on the ground it is an attempt to impeach his own witness. He said he went out——

Mr. Garrett: He testified the evidence was presented. He hasn't testified yet——

(Testimony of Wilbur G. Durant.)

Trial Examiner Kent: As I recall the witness' testimony, in substance, he accepted their statements based as opinion partly on the fact he saw quite a number of A.F.L. buttons worn throughout the plant. Those were about the only buttons he saw.

Mr. Collins: He said he didn't see anything but A.F.L. buttons.

The Witness: That is right.

Mr. Nicoson: That is right. He said he talked to some of the older employees out there and took their word for it.

The Witness: That is right.

Mr. Garrett: He is not impeaching his own witness if he goes into detail.

Mr. Collins: I want to find out more about it.

Mr. Garrett: The statement is obviously not complete.

Trial Examiner Kent: I think probably the objection is well taken. I can't see any objection to your going further into it in your examination, Mr. Garrett. [1370]

Mr. Garrett: No. I think that is quite obvious. We get it on cross-examination and we get it here.

Mr. Collins: Very well.

Q. (By Mr. Collins): Mr. Durant, this contract that you signed with the American Federation of Labor, which is now one of the Board's exhibits in this case, will you tell us a little something about the wage rate paid? Is it a fair rate or did you make a sharp deal with the A.F.L.?

(Testimony of Wilbur G. Durant.)

Mr. Nicoson: That is objected to as calling for the conclusion of the witness; upon the further ground the exhibit speaks for itself, which is in evidence. Whether it is fair or not I think is immaterial.

Mr. Garrett: May I have the question?

Trial Examiner Kent: Reframe it, please.

Q. (By Mr. Collins): Do you know the going rate in the stove industry in the area?

A. No, but it would be patterned by Gaffers and Sattler, in my mind. [1371]

Q. Is the rate being paid now by O'Keefe and Merritt higher or lower than that being paid by Gaffers and Sattler? A. Higher.

Q. Are you able to estimate how much higher it is than Gaffers and Sattler?

A. I am able to, but not in my head.

Q. I see. You mean you would have to figure it out? A. Yes.

Q. Is it your understanding it is higher?

A. That is right.

Q. Did the representatives of the A.F.L. tell you what they were going to do to you if you didn't sign up a contract with them?

A. I didn't ask them; they didn't tell me.

Q. Do you know whether or not I had been having conferences with them for a matter of weeks or months prior to this meeting with you?

A. I know of a week.

Q. You know that much at least, a week?

A. Yes.

Mr. Collins: You may cross-examine.



(Testimony of Wilbur G. Durant.)

Mr. Garrett: I notice it is now about 11:00 o'clock. Will we take the morning recess this morning?

Trial Examiner Kent: We might take a recess for five minutes. [1372]

(A short recess was taken.)

Trial Examiner Kent: You may proceed.

Mr. Nicoson: Mr. Durant, let's go back.

Mr. Collins: I am not quite through.

Mr. Nicoson: I thought you were. I am sorry.

Q. (By Mr. Collins): I have about two questions here. Calling your attention to that meeting in my office, will you relate the conversations that were had and state who said this and who said that? The conversation I am now referring to is between yourself and myself and some 13 A.F.L. representatives present.

Mr. Garrett: Take a long breath before you start this answer.

The Witness: No, I couldn't take over a minute answering, because I wasn't there over five. I met them all and concurred with them that the majority of the plant was A.F.L.

Q. (By Mr. Collins): What evidence, if any, did they show you the majority was A.F.L.

A. They offered to show me. I didn't want to take the time to see it. I was satisfied.

Q. What did they offer to show you?

A. The enrollment of the A.F.L.

(Testimony of Wilbur G. Durant.)

Q. What did they have in their hands, if anything?

A. The enrollment, the numbers, the names; anything I wanted to see. [1373]

Q. Did I say anything in front of you to these representatives?

A. The same thing, you were satisfied that the plant was A.F.L.

Q. Did I say anything else in front of these A.F.L. representatives?

A. Nothing pertinent that I think of.

Q. Did I indicate what they were going to do to us if we didn't sign?

A. You or they implied we would be full of strike trouble sure.

Q. Was any mention made of any unfair list?

A. I know that—I don't recall there being any mention made of it.

Q. Do you recall anything in particular that Mr. McMurray of the Machinists said? Now, I know you don't remember Mr. McMurray by name. He is an elderly gentleman and has black, bushy eyebrows.

A. Mr. Collins, I don't recall anything any of them said.

Mr. Collins: You may cross-examine.

### Cross-Examination

By Mr. Nicoson:

Q. At the time you met with the A.F.L. boys there in Mr. Collins' office, you knew there had been

(Testimony of Wilbur G. Durant.)

a Labor Board election in O'Keefe and Merritt; didn't you? A. Yes. [1374]

Mr. Garrett: Just a moment. Will you please speak up a little louder, Mr. Nicoson. I can't hear you. You talk low to the witness and he will respond to you.

Mr. Nicoson: I beg your most humble pardon, sir.

Mr. Garrett: If you shout at him maybe he will talk louder.

The Witness: I will talk louder.

Mr. Nicoson: When I start shouting people misconstrue my motive.

Q. (By Mr. Nicoson): You also knew that the C.I.O. had won that election; isn't that right?

A. Yes. The right to bargain, is that the election?

Q. Yes. A. All right.

Q. Now, let's go back to the time the Pioneer was set up. Did you have anything to do with the setting up of the Pioneer Electric Company?

A. In 1942?

Q. 1942. A. I set it up.

Q. You set it up? A. Right.

Q. Just how did you go about doing that?

A. We had about 10 or 15 subcontractors on primarily electrical work, such as winding and pre-gnating, and so on, [1375] none of whom were satisfactory on a contract for 2000 units.

We were awarded the contract for 12,000 units to be completed in the same time we were allowed for

(Testimony of Wilbur G. Durant.)

2,000 units. It couldn't be done by anybody in town. We had to set up ourselves to do it or we had to set up somebody to do it.

Q. Before Pioneer was set up, did you go to O'Keefe and suggest that something like this should be done? A. Yes.

Q. And I take it he agreed with you?

A. Yes.

Q. As to the actual formation of the Pioneer Electric Company, itself, as to who would become the partners, what was done or said about that?

A. That wasn't my concern. I didn't have anything to do with it.

Q. You just went to Mr. O'Keefe and you said you thought you ought to have some outfit to take care of this, to do it cheaper, and you left it up to him? Is that about the way it happened?

A. No. The contract was for \$8,000,000.00. It was too big to be done by us. I wanted to do the whole thing ourselves in our plant, the O'Keefe and Merritt. We couldn't get anybody big enough to do it. The electrical end was about \$3,000,000.00 so we organized a company for that.

Q. I am not referring particularly to that phase of it, Mr. [1376] Durant, but the establishment of the Pioneer Electric Company. After you had had your experience with these people on the outside, then didn't you go to Mr. O'Keefe and say, "If this was done under your supervision it could be done cheaper," and you thought better, with less cost for it and all that? A. That is right.

(Testimony of Wilbur G. Durant.)

Q. That is about what you said to Mr. O'Keefe?

A. Yes.

Q. Thereafter the Pioneer Electric Company was formed? A. That is right.

Q. Then the O'Keefe and Merritt turned over to them quite a bit of this stuff that was being done on the outside? A. Yes.

Q. Then it was your experience they were doing it cheaper and you continued that on throughout the war? A. Yes.

Q. And perhaps added to your original allotment to Pioneer as time went on; is that possible?

A. The primary requirement was not to meet schedule, as a war time schedule; absolutely necessary. It worked out to be cheaper in many other things, also. The primary requisite was the delivery schedule.

Q. Can you tell us why you didn't become a partner in the first instance? [1377]

A. I have forgotten what—the first instance required more money, but I didn't have it, anyway.

Q. Did you know that the Pioneer was reorganized in January of 1944? A. Yes.

Q. Did you attempt to become a partner at that time? A. No.

Q. It is your testimony, is it not, Pioneer Electric Company in and of itself is not going to be a sales concern?

A. Sales will, of course, be secondary; manufacture is primary.

Q. I mean directly to the open market.

A. We will have some sales to the open market.

(Testimony of Wilbur G. Durant.)

Q. Is it fair to say that the majority of your sales will not be directly from Pioneer to the open market, but through some other agency or concern?

A. It will be through some other concern, as they are with O'Keefe and Merritt now; that is the purpose of it.

Mr. Garrett: May I have the answer read?

(The answer was read.)

Q. (By Mr. Nicoson): So far as the gas ranges and wall furnaces and things of that nature are concerned, your only outlet from a sales standpoint will be O'Keefe and Merritt; isn't that the arrangement?

A. Our only outlet at present is O'Keefe and Merritt. It [1378] could be just as easily Sears and Roebuck, or anything else.

Mr. Garrett: May I have the answer, please?

(The answer was read.)

Q. (By Mr. Nicoson): At least for the present time you have no sales outlet contract with Sears and Roebuck or anyone else?

A. No. On domestic appliances.

Q. I am speaking now only of the gas ranges, floor furnaces and things of that nature.

Mr. Collins: I move that that—that the question just asked and the answer given in response was given in response to an ambiguous question. That is, you don't have any sales outlet for gas furnaces, ranges, and so forth. I think, in fairness to the

(Testimony of Wilbur G. Durant.)

witness, we ought to have included in there does he mean generators.

Mr. Nicoson: It was quite clear.

The Witness: No, I qualified it as—you are talking now only of household appliances.

Mr. Nicoson: That is correct. I qualified it by saying gas ranges and wall furnaces and floor furnaces and the like.

Q. (By Mr. Nicoson): In response to a question by Mr. Collins you mentioned some anticipated activities costing in the neighborhood of \$400,000.00. Do you remember that portion of your testimony?

A. That is right. [1379]

Mr. Collins: Just a moment. That is objected to on the ground it is not proper cross-examination. It doesn't tend to prove or disprove anything at issue in this case. Upon the further ground it forces this witness to detail information which would be very useful to his business competitors, and one which would cause them severe financial loss if the exact disclosures were made at this time. I don't see the relevancy of the question, if the Board doesn't care to add weight to it, because this man doesn't want to go into exactly what the business deal is. I am willing to let it go at that. I am going to instruct this witness not to disclose that information unless he is forced to do so under a threat of contempt from this tribunal.

Mr. Nicoson: He opened the gate. I think under ordinary rules of cross-examination I have a right to go into it. I certainly don't have any desire to reveal trade secrets here.

(Testimony of Wilbur G. Durant.)

Mr. Collins: I can assure you it is a trade secret.

Trial Examiner Kent: I think the question may be generally asked.

Mr. Garrett: May we go off the record?

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: I will withdraw that question.

Q. (By Mr. Nicoson): Do you recall your testimony about the new activities, Mr. Durant?

A. Yes.

Q. Have those new activities gone beyond the blue print stage? By that I mean planning, and so forth.

A. No, they are in the planning stage.

Q. So that there is actually no production on those new activities at the present time?

A. Only production planning, that is all.

Q. I think you testified it would take about a year to develop that; is that your testimony?

A. No. It will take about a year to tool the plant of O'Keefe and Merritt, as we will, as Pioneer.

Q. It suffices to say those new activities are connected, or are they not connected with the manufacture of gas ranges and gas appliances?

A. They are both that, and generators, yes.

Q. Both that and generators.

A. The planning is both domestic appliances and generators. We are in two complete businesses, and we will always be in it.



(Testimony of Wilbur G. Durant.)

Q. I think off the record you suggested it was in the nature of expansion. A. Yes.

Mr. Garrett: May I have the answer read?

The Witness: Domestic appliances and generators. [1381]

Mr. Garrett: Domestic appliances and what?

The Witness: Generator sets.

Q. (By Mr. Nicoson): You recall shortly after V-J Day the government, or the army, cancelled or terminated your contract: isn't that right? [1382]

A. Most of them, yes.

Q. They were cancelled on or about August 17th, isn't that correct?

A. About 70 per cent were cancelled on or about that date, and the remainder were cancelled within a month. Not all the remainder, but the bulk of them were cancelled within about a month.

Q. It is also true that when those cancellations were made on August 17th, as you say, about 70 per cent, there was an appreciable deduction in Pioneer Electric Company employment? A. Right.

Q. How many employees would you estimate Pioneer had on or about November 20th? That is the date of the election.

A. Purely from estimate, about 15.

Q. About 15. How many of those were engaged in production?

A. About 15 production employees. I am not counting office in that case.

Q. About 15 production. And it is a fair summation of your testimony that number remained

(Testimony of Wilbur G. Durant.)

pretty constant up until Pioneer took over the O'Keefe and Merritt?      A. Yes.

Trial Examiner Kent: I wonder if the record isn't a little ambiguous. Took over O'Keefe and Merritt. They really took over some of the production functions, rather than the business. [1383]

Mr. Nicoson: That is what I had reference to.

Trial Examiner Kent: That is what I thought.

Mr. Nicoson: I think the witness so understood me.

Q. (By Mr. Nicoson): Isn't that correct, sir?

A. That is correct.

Mr. Nicoson: I make no contention here that there isn't an O'Keefe and Merritt Corporation. They do exist for questions of sales and service.

Trial Examiner Kent: Yes.

Mr. Collins: And construction, too, there is no issue about that.

Mr. Nicoson: No, not so far as I am concerned.

Q. (By Mr. Nicoson): When you went up to Mr. Collins' office when you met the A.F.L. men up there, you say you were only there about five minutes.      A. Yes.

Q. Showing you what is in the record as Board's Exhibit 26, which purports to be a copy of the agreement between the Pioneer Electric Company and the various A.F.L. organizations, did you look over the contract at all at that time?      A. Yes.

Q. Is that substantially the same form as it was when you signed it?

Mr. Collins: I will stipulate it is. If that is the Board's A.F. of L. contract. [1384]

(Testimony of Wilbur G. Durant.)

Mr. Nicoson: That is right.

The Witness: I think so.

Q. (By Mr. Nicoson): With the exception that appended to it there were classifications with rates, which don't happen to be on this document, classifications and rates of pay and so forth were there.

A. That is right.

Q. Now, is it your testimony, sir, that this meeting with Mr. Collins took place in the latter part of January, or did it take place on the date that that Board's 26 indicates?

A. What date is on this?

Q. The document you have before you shows a date of consummation of January 2, 1946. Is that the date on which you signed it?

A. I would only be sure whether I was here or not. I don't know whether I was here; I could have been. I am not sure whether it was that date or sometime in this week of the latter part of January.

Q. What is your best—

Mr. Garrett: May I have that answer, please?

The Witness: I am not sure whether it was that date or the latter part of January. I was here both the fore part and the latter part of January.

Q. (By Mr. Nicoson): You have consulted a little book, isn't that correct, Mr. Durant, and I believe you stated [1385] that you were here on January 2nd. Isn't that what you testified?

A. Yes.

Q. That little book is a sort of a diary?

(Testimony of Wilbur G. Durant.)

A. No, I keep track of when I left and when I came home, so I don't say I was here when I wasn't in town.

Q. What is your best recollection that that document, Board's Exhibit 26 in front of you, was signed, on the 2nd of January or not?

A. I don't have a recollection of that time.

Q. You think that is approximately correct?

A. Well, January is, I am quite sure, the month. It wasn't before that time, so it must have been either the first week of January or the last, was all I was here. It doesn't have a signing date, apparently.

Q. You were here on February 1st; were you not?

A. Yes; right.

Q. That is the date Mr. O'Keefe made the speech and introduced you to the men?

A. That is right.

Q. Had you at that time signed the contract with the A.F.L.?

A. Yes.

Mr. Collins: May we go off the record a moment?

Trial Examiner Kent: Off the record. [1386]

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: I will stipulate with counsel that the contract was signed by Mr. Durant the last week of January, 1946.

Mr. Collins: I think it was the last day of January.

Mr. Nicoson: The last day of January, 1946.

Mr. Collins: Dated back to January 2nd, for the

(Testimony of Wilbur G. Durant.)

purpose of giving retroactive pay to the employees from the beginning of negotiations.

Trial Examiner Kent: The record may so show.

Mr. Tyre: That latter statement isn't part of the stipulation?

Mr. Collins: There is no stipulation if it isn't.

Mr. Tyre: There certainly can't be any stipulation about what was in the minds of somebody else, why it was signed, and dated back.

Trial Examiner Kent: What is your stipulation then?

Mr. Collins: I offer to stipulate at this time the contract was signed on the 28th of January and it was dated January 2nd to give the retroactive pay effect; that was the purpose of it. If we can't stipulate all of it, I can't stipulate any of it.

Trial Examiner Kent: On the 28th?

Mr. Collins: 28th of January, or the last working day of January. [1387]

Trial Examiner Kent: The last working day?

Mr. Collins: The last working day.

Trial Examiner Kent: Well, the 31st is Thursday. The 28th of January is Monday.

Mr. Collins: It must have been the 31st then; 31st of January.

Mr. Garrett: The 31st of January would have been a Thursday.

Trial Examiner Kent: Yes.

Mr. Collins: That is when it was signed, because the Pioneer Electric Company was going to take

(Testimony of Wilbur G. Durant.)

over on the 1st of February. Because it wasn't a working day they didn't take over until the 4th.

The Witness: That is right.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: I can't stipulate, but I will ask the witness this:

Q. (By Mr. Nicoson): During the off the record discussion then you have further consulted your little black book. Are you now able to state on what date you signed the A.F.L. contract?

A. Thursday, January 31st. [1388]

Q. In response to Mr. Collins' question about stove mounters, that you didn't have any, what period of time were you talking about when you said they didn't have any stove mounters?

A. During the war. [1389]

Q. During the war. When did they first put any stove mounters on, either O'Keefe & Merritt or Pioneer Electric?

A. About—within the last 30 days.

Q. Within the last 30 days. In any event, it was after the Pioneer took over the manufacturing process?      A. Yes.

Mr. Nicoson: No further questions.

Q. (By Mr. Garrett): How long were you associated with the Frazier-Wright Company, Mr. Durant?

A. 1930 till '35. 1939 till 1940.

(Testimony of Wilbur G. Durant.)

Q. In the first period did that company have any relations with O'Keefe & Merritt, that is, in the period from 1930 to 1935? A. No.

Q. How about the second period, 1939 to 1940?

A. 1941, that should have been. They did have for about two months in 1941 and about one month of 1942, the first month of 1942.

Q. Were they an engineering firm or were they producing anything?

A. No, they were both an automotive parts company and an industrial engine company.

Q. When you were with Frazier-Wright, what was your position with them?

A. Chief engineer. [1390]

Q. Did you have anything to do with production?

A. Yes.

Q. Did you have anything to do with labor problems? A. Yes.

Q. What was your interest in the Frazier-Wright Company, were you a partner?

A. No; employee.

Q. Have you ever held any position prior to coming with O'Keefe & Merritt that gave you any experience in labor problems? A. Yes.

Q. Where?

A. At the Lycoming Manufacturing Company; '35 till '39.

Q. Where are they?

A. Williamsport, Pennsylvania.

Q. Do they make motors? A. Right.

Q. Do they have a labor contract? A. Yes.

(Testimony of Wilbur G. Durant.)

Q. What did you have to do with it?

A. As part of the management we joined the C.I.O. in 15 minutes one night; 2,500 men.

Mr. Nicoson: What was that?

The Witness: As part of management's decision, as to whether to join any union, we joined the C.I.O. in one night as an automotive industry.

Q. (By Mr. Garrett): You were involved in that decision, were you?      A. Yes, sir.

Q. Were these generators that were made by Pioneer Electric sold as generator units or were they sold as part of a different and larger unit?

A. Pioneer Electric Company did not build generators. They built parts of the generator only. The electrical parts of the generator, and other parts of the generator set.

Q. What did you do with the generators you had in work at the time the war orders were cancelled?

A. The parts in process, or the generators in process? Most of them we built up completely and delivered to the government, even after cancellation.

Q. That was different from what you had been doing before cancellation?      A. Yes.

Q. Well, had you been building them up completely before cancellation?

A. Are you speaking now of Pioneer Electric or O'Keefe & Merritt?

Q. Yes, Pioneer Electric.

A. Pioneer Electric Company did exactly as they had done before, which was still building a part of the generator.



(Testimony of Wilbur G. Durant.)

Q. Did O'Keefe & Merritt deliver these generators as generator [1392] units or parts of some other larger—

A. No, as generator units. O'Keefe & Merritt was always the prime contractor to the government.

Q. Did you know when you were working for Frazier-Wright, between 1930 and 1935, that the O'Keefe & Merritt Company had had labor trouble with the American Federation of Labor ?

A. No, I did not.

Q. When did you first learn that ?

A. I never knew that. I knew they had labor trouble period.

Q. You didnt' know specifically when you went to work for O'Keefe & Merritt they were on the American Federation of Labor unfair list ?

A. No, I did not.

Q. During wartime you had no physical evidence of labor trouble brought to your attention ?

A. None.

Trial Examiner Kent: I would like to inject myself here just for a question or two. I notice your testimony was that you made parts for the generators. I assume, from some of the testimony here, that you probably wound the armatures and filled coils. How about the frames, did the foundry of O'Keefe & Merritt turn out the frames ?

The Witness: Yes. Pioneer Electric Company built what might be termed only the electrical end of it. If we built an instrument panel, O'Keefe & Merritt stamped out the panel. [1393] Pioneer Elec-

(Testimony of Wilbur G. Durant.)

tric cut all the wires and mounted all the instruments, and that type of electrical work. On the generator itself they did the electrical winding and the electrical steel work, and that is all.

Trial Examiner Kent: How about the frames, were they turned out in the foundry of O'Keefe & Merritt?

The Witness: They were all turned out by O'Keefe & Merritt Company. Pioneer did that work for other than O'Keefe & Merritt, however. Pioneer sub-contracted to O'Keefe & Merritt primarily; also sub-contracted to a number of other companies.

Mr. Garrett: Do you have any further questions, Mr. Trial Examiner?

Trial Examiner Kent: That is all I had. I thought there was a little gap in there, and probably as much as anything else to clarify my own mind.

Q. (By Mr. Garrett): I take it the Frazier-Wright Company didn't have any labor contracts while you were with them?

A. Not while I was with them, no.

Q. Are they a local concern here? A. Yes.

Q. When did you first find out about the O'Keefe & Merritt Company being on the A.F.L. unfair list?

A. About—when you told me five minutes ago.

Q. I take it then you never had any discussions with Mr. [1394] Collins in which you received that information?

(Testimony of Wilbur G. Durant.)

A. As O'Keefe & Merritt being on the unfair list?

Q. Yes. A. No.

Q. Well, maybe I am using a term which is a little too narrow. I want to be sure you understand. Unfair list is a sort of a technical term.

A. You asked me——

Q. Would your answer be any different if I asked you when you first learned that O'Keefe & Merritt was subject to an existing A.F.L. boycott, which had been unoperative during the war, but which might be expected to become operative again after the conclusion of the war?

A. I didn't think of it as being an operation. I knew it would be in operation in this last week of January.

Q. But now we are speaking about boycotts, rather than unfair lists.

A. Boycott on the sale of our equipment.

Q. But even in the last week of January, I take it, you didn't learn that there had been operative such a boycott long before you came——

A. No.

Q. ——with O'Keefe & Merritt?

A. That is right.

Q. So far as you knew it was something new when you heard [1395] about it the last week of January?

A. As far as I knew about it, it would be new if it went into effect.

Q. When you received that information did you

(Testimony of Wilbur G. Durant.)

receive information which gave you the fact the boycott, while new at the time, had any connection with any previously existing boycott?

A. No, I didn't connect it with any previously existing boycott.

Q. You talked from time to time, I take it, during your employment by O'Keefe & Merritt with Mr. D. P. O'Keefe about your prospects in the business? A. Yes.

Q. And in those conversations he never mentioned this A.F.L. boycott; did he?

A. No. He mentioned some labor trouble, but not a specific instance of it.

Q. You knew that the plant was being operated non-union during——

A. Quite; all my connection with the plant was non-union.

Q. Did you assume that the plant was being operated non-union because no union had ever made any attempt to organize it?

A. No. I knew that a union had made an attempt to organize it. [1396]

Q. You knew probably as a result of your discussions with Mr. D. P. O'Keefe that there had been a long strike?

A. That there had been what?

Q. Did you know there had been a long strike previous to the war? A. No.

Q. What advance notice did you have that an A.F.L. contract was to be presented prior to the day that you signed it?

(Testimony of Wilbur G. Durant.)

Mr. Tyre: Object to that. It assumes a fact not in evidence.

Mr. Garrett: That is correct.

Q. (By Mr. Garrett): Did you have any advance notice prior to the date of signing that an A. F. of L. contract was to be presented?

A. Yes.

Q. When did you receive that information?

A. The latter part of January.

Q. Were you there at the plant at the time the election was held in November? A. Yes.

Q. From whom did you receive your information about the A.F.L. contract in the latter part of January?

A. I told Mr. Collins to take the matter up, the matter of A.F.L. up with their representatives in January, the latter part of January. And I talked to him a number of times during [1397] that last week of January and had him get the contracts drawn up.

Q. When you signed the contract, can you recall whether there were any other signatures on it, or did you sign it first?

A. I don't recall whether there were other signatures on it or not.

Q. Can you recall that it had wage schedules attached to it?

A. I don't remember, but I don't think it did. I think they were separate, is what I mean. I don't believe they were attached to it.

Q. But the wage schedules were there; were they not? A. Yes.

(Testimony of Wilbur G. Durant.)

Q. Can you recall whether or not they covered substantially all the production employees in the plant?      A. They did.

Q. By that, did every classification, every payroll classification in the plant on the production side have a wage attached to it?

A. Right, they did.

Q. Hourly wage?      A. Yes.

Q. When you left the city on February 1st, how long were you gone?

A. I left on February 3rd and came home about the 23rd. [1398]

Q. In the meeting at which you signed the contract were you introduced individually to the representatives of the various A.F.L. unions?

A. Yes.

Q. Who by?      A. Mr. Collins.

Q. Do you receive a salary from the partnership?      A. No.

Trial Examiner Kent: I suppose, in view of that answer, the profits are distributed prorata among the parties according to the——

The Witness: Yes.

Mr. Nicoson: The distribution is all provided for in the Articles of Co-Partnership.

Mr. Garrett: I notice the hour of 12:00 o'clock has arrived.

Mr. Collins: Mr. Garrett, and Mr. Trial Examiner, this witness has to attend some very important meeting at 2:00 o'clock this afternoon. It is going to take him at least an hour. It is worth a lot of money to him.

(Testimony of Wilbur G. Durant.)

Trial Examiner Kent: We might, in the interim, substitute other witnesses.

Mr. Collins: Will there be any lengthy cross-examination?

Mr. Garrett: I don't think so. Mr. Collins will be notified if there is to be further cross-examination. I don't [1399] know about the C.I.O. of course.

Mr. Collins: I want to ask him one question, and I am through with him.

Trial Examiner Kent: You might ask that. We might be able to dispense with him then.

Mr. Garrett: I think I am pretty nearly finished. Do you have any cross?

Mr. Tyre: No.

Mr. Garrett: Let's release him, and recall him.

Mr. Nicoson: Why can't we get rid of him?

Mr. Garrett: I have a conference arranged here with people waiting for me in the outer office.

Mr. Collins: I am going to ask one question.

Is Pioneer making a complete generator now?

The Witness: Yes.

Mr. Collins: In dollars, how many do you contemplate making this year?

The Witness: About \$1,000,000.00.

Mr. Collins: Generators?

The Witness: Yes.

Mr. Collins: That is different than anything O'Keefe & Merritt did?

The Witness: Right.

Trial Examiner Kent: You might give a general

(Testimony of Wilbur G. Durant.)

description as to the way that generator was handled. As I understand [1400] it, now, the frames were turned out in the foundry of O'Keefe & Merritt. You installed the electrical wiring in the generator, and I assume that the Pioneer also tested the generator after it was built up; did it not?

The Witness: No, they did not.

Trial Examiner Kent: Where was that done?

The Witness: We all differ in one word, the use of the word "generator." The O'Keefe & Merritt built not generators, but generator sets during the war. Pioneer builds them now, and generator sets. During the war Pioneer only built a part of the generator, which, in turn, is a part of the generator set.

Mr. Collins: The Pioneer had nothing to do with the gas ranges?

The Witness: No.

Mr. Collins: They had nothing to do with nine-tenths of it, they——

Trial Examiner Kent: They assembled them?

The Witness: Assembled and tested, and everything in the O'Keefe & Merritt.

Mr. Collins: Now, the entire ten-tenths is being done by the Pioneer Electric Company?

The Witness: That is right.

Mr. Collins: Where heretofore they only did one-tenth?

The Witness: That is right. [1401]

Trial Examiner Kent: We will adjourn until 2:00 o'clock.



(Testimony of Wilbur G. Durant.)

Mr. Nicoson: I have one more question I would like to ask.

Q. (By Mr. Nicoson): I would like you to state, as best you can, Mr. Durant, what volume of business will be done over a year's period for the gas ranges and wall furnaces, and such that you are now manufacturing for O'Keefe & Merritt, the same as you estimated the output of the generators. Will you do that, in round figures?

A. You mean what will be the ratio——

Q. No, what will be the dollar value, approximately, of those products you manufacture for O'Keefe & Merritt?

Mr. Collins: That is objected to on the ground it calls for a conclusion of the witness. He is not quite qualified to give it. The evidence shows that the Pioneer Electric Company makes generators and sells generators. He therefore knows the dollar volume of the generators. The evidence also shows that he now makes gas ranges for O'Keefe & Merritt at a price of two and a half per cent of his cost. He doesn't know the dollar volume of those gas ranges. He doesn't know what they are going to be sold for.

Mr. Nicoson: We might let the witness testify. We are letting Mr. Collins talk about an unknown quantity out here which I didn't even go into, about what he was going to make; We talked about the size of that. The witness has testified [1402] about how much he thinks the generators are going to be. All I want him to say is what he thinks how much the product he is going to sell——

(Testimony of Wilbur G. Durant.)

Mr. Reed: I think production hours would be better.

The Witness: I couldn't answer you. I know the generators exactly. I wouldn't miss it by \$10,000.00 on a million.

Mr. Reed: I have about three or four questions.

Mr. Collins: As far as I am concerned, it is all right.

Trial Examiner Kent: I think it would be fair to the witness if we could excuse him now.

Mr. Collins: Let's get it over with.

Q. (By Mr. Reed): In your testimony where you made the statement that in a period of about 15 minutes the company that you were formerly working for decided to join up with the C.I.O.,—

A. That is right.

Q. —do you mean by that testimony you decided to sign a contract with the C.I.O.?

A. That is right.

Mr. Tyre: Just a minute. I move that answer be stricken. It is completely irrelevant and immaterial to this proceeding. I move that answer be stricken for the purpose of making the objection to the question.

Mr. Reed: Mr. Examiner, I think his testimony was a little ambiguous there, and I am merely trying to straighten it out. [1403]

Mr. Tyre: I don't care how ambiguous it is. It has nothing to do with the issues in this case. I don't want to go into the details of it because it is obviously immaterial.

(Testimony of Wilbur G. Durant.)

Mr. Reed: I wonder why he didn't object to the original question and answer, if he thinks it is so immaterial.

Trial Examiner Kent: I think the question is proper. You may answer.

Mr. Collins: He has answered, I think.

(The record was read.)

Q. (By Mr. Reed): Where, before the war, at the time your electric company was operating in the capacity of a sub contractor, a new position of that company will be to operate in the capacity of a prime contractor and full contracting agency; is that correct?

A. You said before the war?

Q. I mean during the war.

A. During the war Pioneer Electric Company was a sub-contractor.

Q. Whereas after the signing of this lease Pioneer Company became a prime contractor?

A. Well, the word "sub-contractor" is right so far as the government is concerned. Since the war, since we are not only contracting for the government, we would be like any other company, a prime contractor.

Q. At the time of signing this contract with the A.F.L., you [1404] knew that you were taking over the manufacture of household appliances for O'Keefe & Merritt Company; is that correct?

A. Yes.

Q. You knew you were going to start with the Pioneer Company, which you represented, and were

(Testimony of Wilbur G. Durant.)

going to start in that capacity on February 4th; is that correct?      A. That is right, I did.

Q. Therefore, you knew at that time that these various classifications and rates of pay previously referred to in the testimony as being a part of the contract that you signed were going to be necessary embodiments within a contract for proper operation of the Pioneer Electric Company; is that correct?

A. I did; that is correct.

Mr. Reed: That is all I have.

Trial Examiner Kent: We will adjourn until 2:00 o'clock.

Mr. Nicoson: Just a minute. I have just two or three questions.

Q. (By Mr. Nicoson): When you were with Lycoming, were you employed in any capacity like an officer or supervisor for Lycoming, when this thing occurred that you were telling us about?

A. I was in charge of the plant.

Q. You were in charge of the plant. Isn't it a fact, Mr. Durant, that charges had been filed with the Board in perhaps [1405] the Philadelphia Region, alleging Lycoming had a company-dominated union there?

A. We were virtually non-union.

Q. Weren't the charges filed saying that Lycoming had a company-dominated union and you made some settlement with the National Labor Relations Board and the charging union; isn't that right?

A. As I recall it, we just simply had the option—there was no union, no other union involved at all.

(Testimony of Wilbur G. Durant.)

It was a matter of whether we stayed non-union or company union or went C.I.O.

Q. Weren't there some charges pending N.L.R.B. charges pending against you at that time?

A. I don't think so. That time, by the way, was 1937 or '38; about 1937 or '38.

Q. 1937 or 1938? A. Yes.

Q. (By Mr. Reed): Had you been informed by your attorney or any other of your staff prior to the signing of the A.F.L. contract or at the time of the signing of the A.F.L. contract that the C.I.O. had made any claim of representation concerning your employees of the Pioneer Electric Company?

A. I was aware of the fact that the C.I.O. that not made any attempts to discuss anything with the Pioneer Electric Company.

Q. Who informed you of that? [1406]

A. I would know—they would have to discuss it with me. Unless they did discuss it with someone else; at least, they did not discuss it with me.

Q. Did anyone of your staff or attorney inform you that it had been made known to the C.I.O. that the Pioneer Electric Company were taking over the manufacturing of the household appliances for O'Keefe & Merritt?

A. Yes. I think Mr. Collins advised the C.I.O. that the Pioneer were taking over or at least told me he had advised the C.I.O.

Mr. Nicoson: I move to strike the answer as not responsive. It is hearsay, and he had no knowledge of it.

(Testimony of Wilbur G. Durant.)

Q. (By Mr. Reed): Did Mr. Collins—  
Mr. Tyre: Just a minute.

Mr. Nicoson: Just a minute.

Trial Examiner Kent: The objection is sustained. It may be stricken.

Mr. Reed: I will rephrase the question.

Q. (By Mr. Reed): Did Mr. Collins inform you that no claim had been made upon him by the C.I.O. to represent the employees of the Pioneer Electric Company?

Mr. Nicoson: Same objection. This calls for hearsay.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Reed): In the meeting that you had with Mr. Collins, and A.F.L. representatives, did Mr. Collins say anything [1407] to you relative to representation by the C.I.O.?

Mr. Nicoson: Same objection.

Q. (By Mr. Reed): For the employees of the Pioneer Electric Company?

Trial Examiner Kent: Read the question.

(The question was read.)

The Witness: No.

Q. (By Mr. Reed): Did Mr. Collins inform you at that meeting that he had informed the C.I.O. representatives that Pioneer Electric Company was taking over the manufacture of those products from O'Keefe & Merritt?

A. Not at that meeting.

Q. Did you at a prior time—

Mr. Tyre: Objected to.

(Testimony of Wilbur G. Durant.)

The Witness: Am I to answer above his objection?

Trial Examiner Kent: You may answer.

The Witness: Yes. During the week.

Mr. Reed: That is all.

Q. (By Mr. Nicoson): Mr. Collins also told you that at or about that time he was dealing or attempting to deal with the C.I.O. relative to these employees of O'Keefe & Merritt? A. Yes.

Mr. Nicoson: That is all.

Mr. Collins: Just a moment. What do you mean by "these employees"? Do you mean the employees of the Pioneer Electric [1408] Company or the employees of the O'Keefe & Merritt?

The Witness: I knew during that week you were dealing with the C.I.O. for employees of anybody, and the A.F.L., for the employees of anybody. You didn't talk anything else for a week but labor.

Mr. Collins: Do you know whether I was trying to sign up a contract for the employees of the O'Keefe & Merritt Company with the C.I.O.?

The Witness: Yes.

Mr. Collins: You know that?

The Witness: Yes.

Mr. Collins: I think there is an ambiguity of your testimony. I am trying to get it straightened out. Do you know whether I was trying to sign up a contract with the A.F.L. for the employees of the Pioneer?

The Witness: Yes.

Mr. Collins: Didn't I tell you nobody had asked

(Testimony of Wilbur G. Durant.)

me to sign up for the C.I.O. with the employees of the Pioneer?

The Witness: Yes.

Mr. Collins: Didn't I tell you that, as a matter of fact, at this A.F.L. meeting in front of the 15 people?

The Witness: I wouldn't be sure of that meeting. Within an hour of that time. It was all in that few days I was here.

Mr. Collins: That is all.

(Witness excused.) [1409]

Trial Examiner Kent: We will adjourn until 2:15.

(Whereupon, at 12:15 o'clock p.m., a recess was taken until 2:15 o'clock p.m.) [1410]

#### After Recess

(The hearing was reconvened at 2:20 o'clock p.m.)

Trial Examiner Kent: You might proceed.

Mr. Collins: I will call Robert White.

### ROBERT WHITE

called as a witness by and on behalf of the respondents, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Collins:

Q. State your name.

A. Robert White.



(Testimony of Robert White.)

Q. Mr. White, what was your capacity with the O'Keefe and Merritt Company during the war?

A. Shipping supervisor.

Q. How many people did you have working under you during the war?

A. Well, that was part of that—I had one actually working under me.

Q. I see. Then after the war was over, how many did you have working under you?

A. Well, I had the same amount actually.

Q. What do you mean the same amount?

A. I just had the same one person.

Q. One fellow. Now, who did the truck drivers work for during the war, and after the war? [1411]

A. Well, they worked under Service Incorporated.

Q. Did you have the authority to hire or fire any of those truck drivers?

A. No, I wouldn't say so.

Q. Did you have the authority to hire or fire any of the employees of Service Incorporated?

A. No, I would say not.

Q. Approximately how many employees did Service Incorporated have?

A. 14 or 15, I would say, offhand.

Q. Who was it that on behalf of O'Keefe and Merritt Company determined what Service Incorporated was to haul; who laid out the work?

A. I laid out the work.

Q. Do I understand that if there was a generator or some parts to be delivered some place you put it on the dock?

A. That is right.

(Testimony of Robert White.)

Q. And then Service Incorporated men came there and picked up this and took it away?

A. That is right.

Q. Now, then, calling your attention to some time in the month of November, did you have a conversation with Mr. Charles Spallino; November of 1945?

A. Conversation with him?

Q. With Charlie Spallino, yes. [1412]

A. Well, I wouldn't say any specific conversation with him, no.

Q. Well, have you talked to him on other occasions besides in the month of November, that you can remember?

A. Regarding myself, you mean?

Q. Regarding anything.

A. No, not in any particular capacity of any description, no.

Q. You have talked to him in the years both you have been working in the same plant together?

A. We naturally have, yes, sir.

Q. Do you recall any conversation with him concerning union activity? A. Definitely not.

Q. Do you recall Charlie Spallino coming to you and saying that he had been instructed to tell you to get the truck drivers together and meet a Mr. Blaney, I think, on the following morning? Do you recall such a conversation?

A. No, definitely not.

Q. Did you ever have such a conversation with him? A. No, sir.

Q. Did you ever tell the truck drivers to come

(Testimony of Robert White.)

together and meet with Mr. Blaney of the Teamsters? A. No, I would say not.

Mr. Collins: You may cross-examine. [1413]

Cross-Examination

By Mr. Nicoson:

Q. Did you ever tell the truck drivers to meet with anyone from the Teamsters' Union?

A. I didn't hear that question.

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: No, sir.

Mr. Nicoson: That is all.

Mr. Garrett: I will waive cross-examination of this witness.

Mr. Collins: That is all.

(Witness excused.)

Mr. Collins: I will call Mr. McNinch. I understand Mr. Garrett hasn't cross-examined Mr. McNinch.

Trial Examiner Kent: That is right.

C. GUY McNINCH

a witness called by and on behalf of the respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Garrett:

Q. Do you know Mr. Levascos, Mr. McNinch?

A. Yes, sir.

(Testimony of C. Guy McNinch.)

Q. After the election did you ever serve on any committee with Mr. Levascos? A. No, sir.

Q. Was Mr. Charlie Spallino an observer at the same table you occupied at the election?

A. He was—no, sir, he was an A.F.L. representative.

Q. Did he tell you that? A. Yes, sir.

Q. That election was at 4:30 in the afternoon; was it not? A. It started at 4:30.

Q. When did you appear there at the place where the ballots were cast?

A. Right as near 4:30 as it could be. It might have been a minute before or after.

Q. Were you at a meeting of the Five and Over Club just prior to that date? A. Yes, sir.

Q. You talked to Charlie Spallino there?

A. Not at the meeting.

Q. What occurred at that meeting?

A. Well, Mr. Levascos—Mr. Spallino got up and made a speech. He thought everybody ought to vote for A.F.L.

Q. Tell us all you recall of that speech made by Mr. Spallino. That is Charlie Spallino, is it?

A. Yes.

Q. Anything else you remember he said?

A. Well, no; not definitely, no.

Q. At the time of that meeting did you know you were to be [1415] an observer in the election?

A. Yes, sir.

Q. Did you know that Spallino was to be one?

A. He was to represent the A.F.L.

(Testimony of C. Guy McNinch.)

Q. When did you learn that?

A. Oh, it was about three or four days; it was the week before.

Q. Who told you? A. Fred Rotter.

Q. Just what did Rotter tell you?

A. Asked me if I would serve as an observer at the election that was to be held by the Board.

Q. Did he tell you anything about Spallino?

A. Not with the exception he was to represent the A.F.L.

Q. Did you talk to Spallino about that?

A. Well, he came to me and told me that he was the A.F.L. representative, was all.

Q. Was that before the election?

A. Yes, sir.

Q. How long before? A. About an hour.

Q. Was anyone with him at that time?

A. Not that I remember of.

Q. Was that before or after the Five and Over Club meeting? A. That was before. [1416]

Q. Did he tell you who had designated him to represent the A.F.L. in the election?

A. No, sir.

Q. How do you know some of those challenged ballots were opened? A. I saw them opened.

Q. Who by?

A. The lady that—that conducted the election, was the only one that had access to handle them.

Mr. Tyre: I move that answer be stricken as not responsive.

Trial Examiner Kent: Read the question.

(The question was read.)

(Testimony of C. Guy McNinch.)

Trial Examiner Kent: I think it is generally responsive.

Mr. Garrett: I will ask a further question to clear it up.

Trial Examiner Kent: All right.

Q. (By Mr. Garrett): Are you just giving me your conclusion as to who opened them, or did you see her open them?

A. I saw her open them.

Q. What happened to them after they were opened, if you know?

A. She tore up the envelope and put the ballot away somewhere.

Q. Had you ever seen her before? [1417]

A. No, sir, not to my knowledge.

Mr. Garrett: I think it will be stipulated that was Mrs. Phoenix.

Mr. Nicoson: Oh, yes.

Mr. Garrett: So stipulated. That is all.

Mr. Collins: Is there anything further?

Mr. Nicoson: Just a minute.

Q. (By Mr. Nicoson): Now, what is your testimony about how many challenged ballots were opened?      A. I couldn't say exactly.

Q. Well, was it more than one? Did you see more than one opened?

A. Yes, there was more than one, I know that.

Q. Do you know whether or not Mr. Rotter, Mrs. Phoenix—that is the lady's name—and some representative of the A.F.L. and C.I.O. had agreed to those envelopes being opened?

(Testimony of C. Guy McNinch.)

A. Well, Mr. Rotter didn't have anything to do with it. But she asked the two other men there, that I assumed were the representatives from both places, because they took down the tally. She asked them to take down the tally of the election.

Q. Do you recall those fellows' names? [1418]

A. Well, the one I found—come to be acquainted with afterwards was Mr. Roberts. But the other man I didn't know; C.I.O. man.

Q. Mr. Roberts was one of the men that he asked if it was all right to open the envelope; is that correct? A. That is right.

Q. And Mr. Roberts said O.K.; is that right?

A. Yes.

Q. Thereafter he did open the envelope; is that correct? A. Yes, sir.

Q. Tore up the envelope and he mixed that ballot with all the rest of them; didn't he?

A. I wouldn't say that he had any envelope he put this in separate. I didn't notice where he put them afterwards; they weren't thrown in the waste paper basket.

Q. I am talking about what happened with the ballot.

A. She put that somewheres too, the ballot.

Q. How do you know she counted them?

A. I didn't say she counted them.

Q. Wasn't it your testimony yesterday that ballot of this Mexican was counted?

A. I said I contested the ballots.

Q. That is correct.

(Testimony of C. Guy McNinch.)

A. And it was brought out and it was opened. After that I didn't—— [1419]

Q. You didn't testify——

A. I don't recollect I said the ballot was counted.

Q. What happened to it?

A. I just told you what happened to it.

Q. Is it your testimony now you can't say whether or not that ballot was counted?

A. That is right.

Q. Mr. McNinch, I show you a document which is in evidence as Board's Exhibit 11, and direct your attention to the second name written in under the words "For O'Keefe and Merritt." Is that your signature (indicating)?      A. Yes, sir.

MR. NICOSON: I have no further questions. Just a minute.

Q. (By Mr. Nicoson): At this Five and Over Club, immediately before the election, Mr. McNinch, was Johnny Levascos there?      A. Yes.

Q. Did he make a little talk?      A. Yes.

Q. What did he say?

A. I will have to think a bit. I can't remember just exactly what he said.

Q. Which one of them talked first?

A. Charlie Spallino. [1420]

Q. Charlie talked first?

A. Yes, sir; I remember that.

Q. Then he introduced Mr. Levascos, and then Johnny had something to say?      A. Yes.

Q. Didn't Johnny have something to say about voting for the A. F. of L.?



(Testimony of C. Guy McNinch.)

A. I just don't remember. He spoke about coming back from the service and that they should do the right thing.

Q. That is right. And that he at one time had been a member of the A. F. of L. union?

A. That is right.

Q. And he was talking about the employees, what they should do in this election that was going to take place in just a few minutes; isn't that right?

A. I can't remember him ever saying they should vote one way or the other.

Q. He did mention the A. F. of L.?

A. That is right.

Q. He talked longer than Charlie; didn't he?

A. Well, that would be pretty hard to say because the time was getting short.

Q. Isn't it a fact that Johnny was the one that talked about voting for the A. F. of L., and not Charlie? You don't recall what Johnny had to say at this time.

A. No. [1421]

Mr. Garrett: He already answered the question. He said no.

Mr. Nicoson: Will you read the last few questions and answers?

(The record was read.)

Q. (By Mr. Nicoson): Isn't it a fact that it was Johnny that spoke about voting for the A.F.L. and not Charlie?

A. No, sir.

(Testimony of C. Guy McNinch.)

(The following portion of the record was read:

“Q. You don’t recall what Johnny had to say at that time?      A. No.”)

Mr. Nicoson: I have no further questions.

Mr. Collins: May this witness be excused?

Mr. Garrett: Just a minute.

Did Mr. Levascos also mention the C.I.O., as well as the A.F.L.?

The Witness: I don’t remember.

Mr. Garrett: That is all.

Q. (By Mr. Tyre): What did Charlie Spallino say at that meeting?

A. Well, I just told a little bit ago that I just didn’t remember.

Q. You don’t really remember what Charlie said; do you?

A. They were called together for the election, see. [1422]

Q. So far as you remember, Charlie said that you people were being called together for the election, is that as much as you remember of what Charlie said?

A. No, he didn’t even say that. We were really called up there—the meeting was really called up there to tell us when we would get our turkeys for Christmas.

Q. That is what he told you?      A. Yes.

Q. He also told you that there was going to be an election?      A. Yes.

(Testimony of C. Guy McNinch.)

Q. That is all you remember that he said?

A. That is all I remember definitely that he said, now.

Mr. Tyre: That is all.

Mr. Reed: No questions.

Mr. Nicoson: No questions.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Collins: I will call Mr. W. J. O'Keefe.

### WILLIAM JOHN O'KEEFE

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Collins:

Q. Mr. O'Keefe, will you state your full name for the record?

A. William John O'Keefe. [1423]

Q. Are you one of the partners of the Pioneer Electric Company? A. I am.

Q. How much money did you contribute to the capital of the organization when it started?

A. \$15,000.00.

Q. Did you get that money from the O'Keefe and Merritt Company, or a part of your personal funds? A. Personal money.

Q. Do you have any other business ventures besides any stock you might have in the O'Keefe and

(Testimony of William John O'Keefe.)

Merritt Corporation and your partnership in Pioneer? A. Several.

Q. Do you have any other connections that are more important to you than your connection in Pioneer?

A. Yes; O'Keefe and Merritt Company.

Q. Are you engaged in any kind of an oil well drilling activity? A. I am.

Q. Do you have any interest in any foundry?

A. I own a half interest in the Overton Foundry.

Q. Do you have any interest in an engineering company of any kind?

A. I own a sole interest in Precision Manufacturing Company.

Q. Calling your attention to any time prior to January 20, [1424] 1946, did the O'Keefe and Merritt Company have any teamsters working for them, say, a period of three or four years? A. No.

Q. Who did the teamster work for then, the hauling of the products of the O'Keefe and Merritt Company?

A. All of the hauling done for O'Keefe and Merritt Company—I should say the majority of it, to my knowledge, was done by Service Incorporated.

Q. There were other companies that did some hauling for you? A. Yes.

Q. Pacific Freight Lines and pick-up drivers here and there?

A. I can remember the Pacific Freight Lines and Western Transportation. Two or three other outfits, I don't remember the names of them.

(Testimony of William John O'Keefe.)

Q. Now, did O'Keefe and Merritt have some service men, refrigeration and stove service men?

A. Domestic Service.

Q. Domestic Service?

A. Yes, they did.

Q. These service men drove trucks; did they not?

A. That is true.

Q. They weren't hired to haul merchandise other than the parts for appliances to the homes? [1425]

A. We never hauled anything on our service trucks with the exception of small parts used for repair work on the appliances.

Q. Will you relate what changes, if any, have been taking place in the manufacturing of gas ranges in the O'Keefe and Merritt factory or the Pioneer Electric Company since February 1, 1946?

A. By changes, do you mean changes in the way that the stove was manufactured?

Q. Well, the changes in the way the stove was manufactured and any other changes you can think of as a result of being transferred to the Pioneer Electric.

A. I think I am answering this correctly. The stoves we are now making through the facilities of the Pioneer Electric Company are an entirely different basic design than the ones the O'Keefe and Merritt Company made the last time they were in the manufacturing of stoves.

Q. What is this basic change?

A. O'Keefe and Merritt Company made a stove which was assembled out of parts brought to an

(Testimony of William John O'Keefe.)

assembly line or a finish assembly line. Pioneer Electric is making a stove that is designed around a one-piece body construction; an entirely different method of doing it.

Q. Were there any other changes that Pioneer brought in?

A. They made some design changes, and they have made a [1426] number of changes in the actual operation of the—not the operation, but the fabrication of parts.

Q. Did the Pioneer Electric Company cease manufacturing any items that O'Keefe and Merritt was manufacturing after they took over the plant of O'Keefe and Merritt?

A. I don't believe I understand that, Mr. Collins.

Q. Did Pioneer quit making any of the items that O'Keefe and Merritt was making when they took over, Pioneer came in on the 1st of February? Was there anything that O'Keefe and Merritt was manufacturing that the manufacturing was stopped on when the Pioneer took over?

A. Nothing any further than the assembly of generators, which had been dropped by O'Keefe and Merritt Company prior to that time, anyway.

Q. Was there any change in outside jobs being done in the foundry? Were there any changes back there? A. Yes, there were. [1427]

Q. What were those changes?

A. Up to and including the time that Pioneer took over the majority of the foundry work was done on outside contracts.

Q. Such as what?

(Testimony of William John O'Keefe.)

A. During the war period probably 90 to 95 per cent of the foundry was taken up by outside work.

Q. Give us some examples of the type of outside work?

A. Mostly plumbing supplies.

Q. Now, the foundry being operated by Pioneer Electric makes plumbing supplies?

A. To the best of my knowledge Pioneer Electric is making nothing but stove parts and a few generator parts.

Q. If there was anything of that nature being made by them you would know about it; would you not? A. Yes, I would.

Q. Do you know anything about an A. F. of L. charter being granted to the employees of the O'Keefe and Merritt Company? A. I do.

Q. What do you know about that?

A. There was an A. F. of L. charter granted to the employees of the O'Keefe and Merritt Company somewhere around '36 or '37; 1936 or 1937.

Q. How do you know that? [1428]

A. To clutter up the record with more family the president happened to be married to my cousin. I found that out after he was president.

Q. Did he tell you that at work or at your house?

A. I knew he was president of the A. F. of L. local at our plant. I found it out when somebody in the family died and I met him at the wake.

Q. Did you ever hear of a C.I.O. charter or any C.I.O. members coming into the O'Keefe and Merritt Company? A. Not until very recently.

(Testimony of William John O'Keefe.)

Q. Did you ever hear of it before the election?

A. No.

Q. Do you know whether or not there were any A. F. of L. members employed by the Pioneer Electric Company prior to the election?

A. I don't know whether they were paid up members or not. I saw A. F. of L. buttons.

Q. On the employees of the Pioneer Electric Company?      A. That is right.

Q. Did you see any A. F. of L. buttons on the employees of the Pioneer Electric Company after the election?      A. I believe I did.

Q. Did you see any A. F. of L. buttons on the employees of the O'Keefe and Merritt Company after the election?      A. I did. [1429]

Q. Did you see any C.I.O. buttons on the employees of the O'Keefe and Merritt Company prior to the 1st of February, 1946?

A. I wouldn't be able to set that date exactly, but I don't think so.

Q. Did you see any C.I.O. buttons on anyone except the witness Mr. Charles Spallino who testified in court?      A. Since February 1st?

Q. Since February 1st, yes.

A. Yes, I think I have seen a few.

Q. Name the ones you have seen them on.

A. I am sorry, I didn't try to correlate the name and the button at the time.

Q. Were you able to estimate the number as to whether it was two or three or a hundred, or what it was?



(Testimony of William John O'Keefe.)

A. I imagine I have seen maybe a couple of dozen.

Q. A couple of dozen? A. Yes.

Q. How many A. F. of L. buttons would you estimate you had seen?

A. A couple of hundred.

Mr. Nicoson: Is this all around about February 1st?

Q. (By Mr. Collins): This couple of hundred buttons you have testified seeing on the employees of the O'Keefe and Merritt Company or the employees of the Pioneer Electric [1430] Company, over what period of time have you noticed that?

A. Which are you talking about now, Pioneer or O'Keefe and Merritt?

Q. Prior to February 1st they were employees of the O'Keefe and Merritt Company?

A. That is right.

Q. How many buttons would you estimate you saw on the employees of the O'Keefe and Merritt Company prior to the 1st of February?

A. Those are the figures I think.

Q. About a couple of hundred? A. Yes.

Q. Are they still wearing the buttons, about that ratio?

A. What time I have had out of this damned place I noticed about that same amount.

Q. Did any other Company besides the Pioneer Electric Company keep all or substantially all its personnel at work on products for the O'Keefe and

(Testimony of William John O'Keefe.)

Merritt Company during the period from the war up to the time of the termination of the war?

A. I know two or three companies that kept substantially all. I couldn't say whether it was the complete personnel or not.

Q. Would you name those companies?

A. The James Graham Manufacturing Company was probably [1431] 98 per cent on O'Keefe and Merritt work. The Drewitt Metal Products, I think, was about 75 or 80 per cent on our work.

The Wirshing Company, Wirshing Manufacturing Company was probably 75 per cent.

The Waldrip Welding Company was about 90 per cent.

The Reuland Electric Company was possibly 50 per cent.

There were others, but offhand I can't think of them.

Q. Do you know whether or not there was any profit limitation clauses in any of your contracts with these contractors that you have now testified to that have kept most of their employees working on O'Keefe and Merritt products?

A. Yes, there were.

Q. In any of these companies you have now mentioned were there any employees or officers or stockholders of O'Keefe and Merritt interested in a business way, if you know, in a financial way? In other words, any of the officers, employees or members of the board of directors of the O'Keefe and Merritt have any financial interest of any kind in

(Testimony of William John O'Keefe.)

these companies you have just been talking about?

A. Yes, they did.

Q. In which companies?

A. In Wirshing Company, Graham, Waldrip; some in Reuland, I believe.

Q. Do you know anything about how the Pioneer Electric [1432] Company originally started?

A. Yes, I think I do.

Q. Will you relate the method, if you can, of the origination of the Pioneer Electric Company in 1942? [1433]

A. We had at that time a contract for approximately \$2,000,000.00, which was spread, the electrical end of which was spread to various contractors in town who were at that time, even at that time inadequate to supply the needs as they were laid out to us by the government contracts. Some method was necessary to facilitate that production.

As nearly as we could find, nobody in town was large enough or capable enough of taking care of the facility as we had to have it. So Mr. Boyle and Mr. Merritt put up their personal funds.

Q. Which Mr. Boyle?

A. Both Willis and Lewis Boyle.

Q. Both of the Boyles put up their personal funds?

A. Both of the Boyles put up their personal funds.

Q. How much funds did they put up?

A. I have no idea, but they were operating approximately a \$3,000,000.00 a year business.

(Testimony of William John O'Keefe.)

Q. A substantial amount?

A. I would imagine it was. They put up their personal funds to operate this business and started it from there.

Q. Did O'Keefe & Merritt form it?

A. O'Keefe & Merritt had nothing to do with it.

Q. Do you know anything about what transpired, or the method of admitting Mr. Durant to the partnership of the Pioneer Electric Company, as well as yourself to the Pioneer Electric [1434] partnership?

A. Yes.

Q. Will you relate how you fellows got into it?

A. At the termination of the war we had an inventory on hand at O'Keefe & Merritt Company, which was to be paid for by the government agencies to which they belonged.

Mr. Durant had the idea at that time that besides Pioneer Electric carrying on with manufacturing of our civilian products——

Q. Such as what?

A. Stoves, heaters, water heaters, and so forth; our standard line before the war,—that we acquire this government inventory by bidding to the government agencies for it, plus attempting to acquire from other sources throughout the country, who had been engaged in similar business, as much of it as possible, so we would continue in the generator business from a civilian standpoint in the future.

O'Keefe & Merritt wasn't interested in any way as a company in that particular type of enterprise. So Durant, myself, and some of the others around

(Testimony of William John O'Keefe.)

the place put up our personal monies to carry on this partnership.

Q. When, so far as you know, was it first contemplated that Pioneer Electric Company would manufacture the gas range?

A. Somewhere about two years ago.

Q. Have you ever discussed this matter with any of the people [1435] around the O'Keefe & Merritt Company, the fact that Pioneer was going to take over the manufacture of the gas ranges?

A. I have been so close to it and discussed it so often with various people I wouldn't be able to name anyone in particular. It has been common knowledge, I am sure.

Mr. Collins: Will you read the answer?

(The answer was read.)

Q. (By Mr. Collins): Common knowledge where?

A. I would say it was common knowledge around O'Keefe & Merritt and Pioneer.

Q. For how long a period of time?

A. Somewhere around a couple of years.

Q. Did I ever tell you that I advised Mr. Despol at my first meeting with him that Pioneer Electric would very likely take over the manufacture of gas ranges? A. Yes.

Mr. Tyre: I object to that. I think it is self-serving and certainly isn't binding on the C.I.O., as to what conversation took place between Mr. W. J. O'Keefe and Mr. Collins.

(Testimony of William John O'Keefe.)

Trial Examiner Kent: I can't see the materiality of that.

Mr. Collins: Mr. Trial Examiner, I submit it is very material to show. That goes to the very issue, to show that Pioneer Electric Company dealt in good faith with the A.F.L. when they signed the contract.

Mr. Despol was put on notice by myself that Pioneer was [1436] in contemplation of taking over this equipment, manufacture of it. The testimony of witnesses here, both as witnesses on the stand and stipulated testimony evidence, shows that no demand was made by Despol to bargain for the employees at the Pioneer Electric Company. Therefore, this man, when he signs a contract with the A.F.L., is doing it after the C.I.O. has had ample notice. They didn't even go to the trouble to get the thing on the election when it was a matter of common knowledge the thing was going to be made by the Pioneer Electric Company.

Mr. Tyre: If Mr. Collins wants to put into evidence what his statement to Mr. Despol was, either Mr. Collins should take the witness stand or Mr. Despol, or someone who was present when the statement was made, whose statement will be binding on us. Mr. O'Keefe can't testify to a conversation between Mr. Despol and Mr. Collins when he wasn't present at it.

Mr. Collins: It goes to whether or not Mr. O'Keefe at Pioneer Electric Company dealt in good faith with the C.I.O. when they signed a contract

(Testimony of William John O'Keefe.)

with the A.F.L. I will submit that there is testimony, I think, of eight or nine witnesses who said that I mentioned that Pioneer Electric was going to take over the manufacture of the O'Keefe & Merritt gas range. And the testimony shows that Mr. Despol then said that he wouldn't take it lying down, or something like that; I don't just remember what his conversation was. [1437]

There is no evidence that Despol said, "I want to sign a contract with Pioneer Electric Company." Nowhere in the evidence is there anything like that.

Trial Examiner Kent: The answer may be taken.

The Witness: What was the question again, please?

(The question was read. )

Q. (By Mr. Collins): You may answer.

A. You did advise me you had a conversation with Despol in which you had told him that.

Q. Relate the conversation.

A. Between yourself and myself?

Mr. Tyre: Mr. Examiner, that is the very point. How could we possibly sit here and hope to rebut such testimony, when there wasn't anybody representing the C.I.O. or the Board, or even the A.F.L., for that matter, present at that conversation.

Trial Examiner Kent: I think the objection is well taken. The testimony is offered to prove——

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Did I tell you that Mr.

(Testimony of William John O'Keefe.)

Despol told me that he had gone to considerable organizing expense——

Mr. Tyre: Mr. Examiner, that is the very thing we have just objected to. I don't care whether he puts the statement in the witness' mouth or whether he asks the witness to state in his own language what was said at that conversation. In [1438] either case that sort of evidence is entirely inadmissible at this hearing or any other type of hearing.

Mr. Collins: May I finish my question?

Trial Examiner Kent: You may finish the question.

Q. (By Mr. Collins): Did I tell you at this first meeting with Mr. Despol that I had told him that Pioneer Electric Company was going to take over the manufacture of the O'Keefe & Merritt gas range, and did he not tell me that, among other things, the union had gone to considerable expense and wouldn't take it lying down——

Mr. Tyre: In addition——

Mr. Collins: Just a minute. I am not through with my question.

Q. (By Mr. Collins): Didn't I also tell you that I then said to him, "I will take it up with my clients and see if they will underwrite your organizing expense if you will keep this thing on a peaceful basis and take it to court, rather than taking it to a strike and having a heartbreaking strike around the plant"?

Mr. Tyre: Obviously this question is not only leading and suggestive, but it has been made in such



(Testimony of William John O'Keefe.)

a manner it is impossible to ask even if the other grounds for inadmissibility did not exist. I think the Examiner must at this time make a ruling that the question is inadmissible and the entire line is inadmissible. The error that counsel has now committed in [1439] asking such a leading and suggestive question is absolutely incurable.

Mr. Collins: During the time I cross-examined Mr. Johnny Despol I laid the foundation for this very question in an attempt to impeach his testimony.

I asked him point-blank didn't I say this and didn't I say that; the very question I am now propounding to this witness. Most of the things I am asking this witness Despol admitted he said.

Mr. Tyre: Your Honor, a self-serving declaration by one of the persons to the conversation isn't rebutting the evidence, unless the witness himself at that conversation gets on the stand and denies it. If Mr. Collins wants to deny it, let him get on the stand and under oath deny it.

Mr. Nicoson: I never heard of anything so preposterous in my life, that you can impeach the witness' testimony you laid the groundwork for by telling somebody else what you said.

Trial Examiner Kent: I will sustain the objection. [1440]

Mr. Collins: I make an offer of proof at this time that if this witness were permitted to answer he will testify there was such a conversation.

Mr. Garrett: Aside from the leading nature of

(Testimony of William John O'Keefe.)

the question, there is something germane and something that ties up with the Despol conversation in this, as being a report made by the attorney to his client, in accordance with the promise made to Mr. Despol that was testified to.

Mr. Collins: I submit it is highly material. I may decide to take the stand, although I am here without——

Mr. Garrett: I think it is leading.

Mr. Collins: I may decide to take the stand and so testify. In any event, this would be corroboration of my testimony, if I decide to do so.

Mr. Nicoson: You don't suggest, Mr. Garrett, that is a proper impeachment method?

Mr. Schullman: He refuses to answer on advice of counsel.

Mr. Garrett: I never thought it was proper until I saw you doing it on your direct of Spallino.

Mr. Nicoson: I don't object to what the attorney told his client. I certainly say it is certainly not a proper method of impeachment.

Mr. Collins: Very well. I will withdraw the question.

Q. (By Mr. Collins): What report did I make to you concerning my conference with Despol?

Mr. Nicoson: Now, your Honor, this is getting ridiculous. He has told him what he wants him to say, and now he wants him to tell him what was said.

Trial Examiner Kent: I will reserve my ruling and take it subject to motion to strike if Mr. Collins does not testify.

(Testimony of William John O'Keefe.)

Mr. Tyre: If Mr. Collins is going to testify he is the only competent witness who can possibly rebut what Mr. Despol has said. Mr. W. J. O'Keefe was not present at that conversation. How can we possibly cross-examine him on what was said at the conversation, unless he was there?

Mr. Garrett: O'Keefe is the man that knows what Collins told him.

Mr. Tyre: We can't cross-examine on conversations at which we were not present.

Your Honor, this question calls for a self-serving declaration by Mr. Collins, which is clearly inadmissible. It calls for hearsay testimony, it calls for a conclusion of the witness and calls for testimony supposedly—rather calls for conversation at which neither the C.I.O. nor the A.F.L. nor anybody else, except the respondent's own agents, were present. On those and probably a half dozen other grounds it is probably not necessary here to mention, this sort of testimony is entirely inadmissible and it will be ridiculous to allow it. [1442]

Mr. Collins: As I understand the Board made a ruling. Go ahead and answer.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record. Read the question.

(The record was read.)

Trial Examiner Kent: I will let my original ruling stand and sustain the objection.

Mr. Collins: I would like to point out Section

(Testimony of William John O'Keefe.)

26, which states, "In any such proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling." I wish to add on the further ground—

Trial Examiner Kent: In apropos of that, they are substantially controlling. We attempt to follow the general rules of evidence.

Mr. Collins: —on the further theory the principal is now receiving a report from his agent, and I would like to have an answer. You may answer.

Mr. Nicoson: No.

Mr. Tyre: What do you mean, "You may answer"?

Mr. Nicoson: He now sustains the objection. That is the last ruling.

Trial Examiner Kent: No. I read something further in the offer of proof. If you submit a proposition of that sort to your clients for action by the clients, I think then [1443] that this line of inquiry might be proper.

Q. (By Mr. Collins): Did I submit any kind of a proposition to you after discussing this matter with Mr. Despol?

A. Do I answer or don't I?

Trial Examiner Kent: There hasn't been an objection as yet. Yes.

The Witness: Yes, you did.

Q. (By Mr. Collins): What was the proposition?

Mr. Tyre: I object to that.

Mr. Nicoson: Same objection.

(Testimony of William John O'Keefe.)

Mr. Tyre: Same reasons apply to this question.

Mr. Nicoson: He has already told him what he wants him to say.

Mr. Collins: Everybody knows what he is going to say. What is the use of all the objecting?

Mr. Nicoson: Why have him say it? You are the fellow that ought to testify, not Bill O'Keefe. He wasn't there. He don't know what was said.

Mr. Collins: People testified already they were there.

Mr. Nicoson: You can't attack Bill O'Keefe's credibility through you or your credibility through him.

Mr. Collins: I am not attacking anybody's credibility.

Mr. Nicoson: I certainly want it in such a shape I can attack if if you are doing it.

Mr. Garrett: Mr. Collins can't testify as to confidential communications. You ought to know that, Mr. Nicoson. [1444]

Mr. Nicoson: If it is a confidential communication this witness can also claim the privilege, if he wants to.

Mr. Tyre: Or waive it.

Mr. Nicoson: Yes.

Mr. Garrett: He is not claiming it, I notice.

Mr. Nicoson: All right.

Mr. Schullman: I think we have missed one thing. A lot of these objections are very well taken, except in a Labor Board proceeding, in order to bind a principal you must show knowledge of the

(Testimony of William John O'Keefe.)

principal and agency's act. If attempts to show communication of the principal, I think the Board of Examiner should be advised.

Mr. Garrett: I think there is something to that point.

I believe there has been a good deal of light and rather airy discussion, but there are a couple of things involved in relation to this conversation that bring to mind certain principles that I think ought to be considered by the Trial Examiner.

One of those principles is this: As Mr. Schullman said, in these proceedings, or in any proceeding where a party negotiates through an attorney it is not only permissible, but very advisable to bring out the facts as to whether or not the negotiations were brought by the attorney to the attention of his principal. The reason [1445] for that is that the agency of an attorney is not a general agency, but a special agency. It isn't true that in any, all or even a majority of cases the proposal, the proposition given or received by an attorney are properly held to be the proposition, proposal given or received by the client.

It is necessary in the case of negotiations through an attorney, that are outside of the scope of employment, in conducting a particular piece of litigation, to show whether or not those matters were communicated to the client sought to be bound. In this case the client sought to be bound is Mr. O'Keefe. It is very material to find out what he learned about Mr. Despol's proposals.

(Testimony of William John O'Keefe.)

Mr. Collins: It goes to the question of good faith, your Honor. If this witness knew at the time that his company signed up with the A. F. of L. that somebody else was in there asking for the bargaining right, that is one thing; that is an important thing to do.

This is the only way it can be brought out, by conversation that was had between Despol and myself. They keep talking about my taking the witness stand, your Honor. I may decide to do so. I don't like to take the witness stand in any case. I am an attorney. I am not a litigant. I am not a party litigant in any of these proceedings. These other attorneys know it as well as I do. I am not here [1446] with associate counsel to put me on the stand and examine me. I consider it contrary to the canon of professional ethics to get up and testify and argue about my own testimony, especially when I know this is going to go before the courts of law, the highest court of law. I don't feel it my duty to get up and testify.

Mr. Tyre: Mr. Garrett made two remarks. One is that the company in this case, the principal cannot be bound by the acts of the agent, unless the principal knew what the agent was doing. Secondly, in the case of an attorney, he has no general power to act in these sort of matters, unless he has been specifically granted that power. I think both arguments are entirely fallacious.

I think by the law of the National Labor Relations Act that a principal can be bound by the un-

(Testimony of William John O'Keefe.)

fair labor practices committed by its agents, employees or servants, even though no specific knowledge of that particular act has been given to the principal or no specific instructions have been given by the principal to the agent.

Secondly, in any event, there is already plenty of testimony in this record that Mr. Collins was bargaining for and on behalf both Pioneer Electric Company and O'Keefe and Merritt with various labor organizations. He had the power to negotiate back and forth with these labor organizations. Therefore, he had the general power [1447] to negotiate and bind the employer with reference to labor negotiations.

Therefore, even if the first rule didn't apply—and it does—anything said by Mr. Collins with reference to labor matters would be binding upon his principal upon the ground he was held out as a general agent for that purpose.

Mr. Collins: That is an incorrect statement of the fact. In the first place Mr. W. J. Durant, or whatever his name was, was the one that signed the contract with the A. F. of L. There is no showing I had any authority to sign a contract with the American Federation of Labor on behalf of Pioneer. My authority was strictly limited in that case.

If your Honor please, I think your first ruling was substantially correct. It should have been that this goes in subject to being connected up. I have a witness beside me who was at all these conversations. There is no necessity for me to take the stand.



(Testimony of William John O'Keefe.)

I think they should be backed up with as much corroborative testimony as possible, for the sake of the record.

Mr. Nicoson: I think if he has better evidence than this he ought to be made to resort to it.

Trial Examiner Kent: Read the pending question.

(The question was read.)

Trial Examiner Kent: He may answer. [1448]

The Witness: You told me you were bargaining with Despol for O'Keefe & Merritt Company, and in return for handling the thing in a quiet and orderly manner—in fact, if I remember correctly, you wanted to refer it to the Labor Relations Board. And in consideration for no strikes or violence of any kind you had discussed with Despol paying his organizational expense and so forth he had incurred so far in the organization of our company.

Q. (By Mr. Collins): I was going to pay it or I would see my client——

A. You asked me if the company was willing to pay that expense.

Q. Now, then, Mr. O'Keefe, referring to the spring of 1942 or 1944, wherein Mr. Charles Spallino, Mr. Joe Spallino, and myself were in my office, the factory of the O'Keefe & Merritt Company, do you recall having heard any conversation between Mr. Charles Spallino, Mr. Joe Spallino and myself?

A. I do.

Q. Will you relate the conversation?

(Testimony of William John O'Keefe.)

A. Charlie and Joe came up to your office and discussed, as I recall it, two points. One was——

Q. Just a moment. Were you in my office when they came up?

A. I was there before they came up.

Q. Were you in there pursuant to any pre-arranged plan to talk to these men, or were you in my office on other business? [1449]

A. I had no pre-arranged business to talk to anybody about. As far as I was concerned, they were a surprise.

Q. Relate the conversation.

A. They came in discussing two points. It seemed that Charlie wasn't getting along fast enough with his compensation on his injury. You had handled the matter, or had had it handled by the doctor of the company. You gave him some instructions about that, which I do not recall.

At the same time he was asking for a raise and gave you a very detailed description of why he should be paid twice as much money, which you told him you would discuss with me, and they left.

Q. Did he complain about working nights or anything about his hours?

A. He gave you the story that I didn't know ahead of time that he had not been surprised with having worked at night. He realized that he was being put in a position where he would be a night supervisor, but he didn't like the idea of the night work, regardless of the money. He wanted to work daytime, and thought he was still worth more money.

(Testimony of William John O'Keefe.)

Q. Where did he get the idea he was going to be a night supervisor? A. From me.

Q. What did you tell him in that connection?

A. At that time we were making projectors for the Armed [1450] Services. We had a sixty-nine point inspection program on each one of these projectors, which necessitated quite a crew of people on some rather intricate gauges. It was such a specialized job I felt Charlie could learn to handle it without any trouble. I told him when he came back to work, at that time the doctor said his arm was weak and he wouldn't be able to do any heavy work of any kind.

I thought this would fit right in with something he could take care of, because of the injury and long service with the company, and I wanted to see if we could put him in a position to make a little better job than he had prior.

Q. What was he making prior to the injury?

A. Either 85 or 90 cents an hour.

Q. When he came back what did you pay him?

A. I believe we started him, when he first came back, in exactly the same pay and told him as he learned the job we would raise him. I know we ended up paying \$1.30 an hour.

Q. Did you take anybody off the job to give him the job?

A. We had a man in charge of it at that time, yes.

Q. Whom did he replace?

A. He replaced a fellow whose name I have for-

(Testimony of William John O'Keefe.)

gotten. He came out here from the east. He was a specialist at that type of work.

Mr. Garrett: I notice the hour of 3:30 has arrived. Will there be an afternoon recess? [1451]

Mr. Collins: I want to ask about two more questions, and then I am through with him, Mr. Garrett.

Trial Examiner Kent: Finish the questions.

Q. (By Mr. Collins): Were there women in the department you put him back in?

A. Yes.

Q. Were they doing the same type of work?

A. You are now discussing the department he first went back in with the offer of night supervisor job?

Q. When he first came back or any time thereafter, what did you do with him?

A. After he started on this night supervisor's job, he decided he either didn't like the night work, part of what he told me—it was quite a long, drawn-out story. There were women on that job. We then transferred him to two or three other departments, all of which had women working in them.

The job I am talking about, where he ended up making \$1.30 an hour, he replaced a girl.

Q. Do you know whether or not I am paid on a fee basis by O'Keefe & Merritt or paid a weekly salary?

A. As far as I know you are paid by the month, and have been for eight or ten years.

Q. I am paid by the month whether I work or not?

A. We don't expect you will not.

(Testimony of William John O'Keefe.)

Q. Was it part of your job as plant superintendent to meet [1452] with grievance committees?

A. It has been ever since we had a grievance committee.

Q. Tell us about the grievance committee, what the set-up was on that?

A. The grievance committee was inaugurated for a number of years, around '36 to '40, somewhere around there.

Q. Where were they from?

A. The members of the grievance committee were made up of a member of each department in the factory. It seemed to die a natural death; we hopefully surmised they had no grievances. [1453]

It was revived again in about '42 or '43, somewhere in that general time, although I don't recall the exact time, because there was no special time or place designated for grievance meetings.

Q. Mr. Spallino, did he have anything to do with those grievance committees?

A. He went through the shop and took a vote, as I understand it, from each department on who that particular department would like to have the responsibility of representing them on their grievance committee.

Q. Did he pick the committee or did the employees vote on who should be their committeeman in each department?

A. It was my understanding it was rather a joint venture, that Charlie took a vote of the consensus of the department, and then selected the men

(Testimony of William John O'Keefe.)

that suited the majority of the people in the department.

Mr. Collins: You may cross-examine.

Trial Examiner Kent: We might take a five-minute recess at this time.

(A short recess was taken.)

Q. (By Mr. Collins): Did you seek admission, Mr. O'Keefe, to the Pioneer Electric Company partnership?      A. Did I seek admission to it?

Q. Yes.

A. I would say it was more of a mutual venture.

Q. What was your reason for getting in?

A. In the first place it appears to me that the purchasing and building of these generator parts is very lucrative as a business and should be a fairly substantial profit. That would be enough reason. Along with that, from O'Keefe and Merritt's standpoint, we would have very definite tax savings and a definite advantage in presenting our case to the O.P.A. for a new price on our range.

Q. Do you expect to make any money out of the manufacture of gas ranges from your partnership interest in the Pioneer Electric?

A. None particularly. It is on a cost plus, a very small profit arrangement.

Q. So far as you are personally concerned, you are better off with your profits through O'Keefe and Merritt? Is that the gist of your testimony?

A. I don't think I quite understand.

Mr. Garrett: That is very leading.

Mr. Collins: I will withdraw the question.

(Testimony of William John O'Keefe.)

Q. (By Mr. Collins): Do you expect, as a partner of the Pioneer Electric Company, to make any profit from the manufacture of the gas ranges?

A. Yes, there will be a small profit.

Q. Did you get into the partnership and attempt to get the right to manufacture gas ranges to circumvent any National [1455] Labor Relations Board conducted election?

Mr. Nicoson: Objected to as calling for a conclusion of the witness, a legal conclusion of the witness.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Does it make any difference to you whether the Pioneer Electric Company signs up with the A.F.L. or the C.I.O.?

A. No.

Q. Are you willing to submit to a Board conducted election on behalf of the employees of the Pioneer Electric Company? A. Yes.

Q. You would bargain with whichever group won that election; is that true? A. Yes.

Mr. Collins: That is all. Wait a minute.

Q. (By Mr. Collins): Do you know how many employees the Pioneer Electric Company took over from the O'Keefe and Merritt Company on February 4th?

A. No, I do not. I would say it was somewhere—I would make a guess at around 300. I don't know exactly.

Mr. Collins: That is all.

Mr. Nicoson: No questions.

Mr. Tyre: No questions.

(Testimony of William John O'Keefe.)

Cross-Examination

By Mr. Garrett:

Q. Mr. O'Keefe, you spoke of the AFL [1456] charter in 1936 or 1937. Do you recall the name of the person you mentioned as having been president of the organization at that time?

A. I think the first name was William; nickname was Bill Chamberlin.

Q. That was a charter of the Stove Mounters Unions; was it not?

A. So far as I knew, yes.

Q. And Mr. Petero, who is connected with the Stove Mounters, here at my left, he was an employee of yours at that time; was he not?

A. Mr. Petero has been an employee of ours, I think, three or four different times. He has been on and off the payroll.

Q. Mr. Petero is just back from the wars now, and is now representing the Stove Mounters Union?

A. I know.

Q. That was quite a long strike that occurred in 1936 and 1937; was it?

A. I think we had a semblance of a picket line for something in excess of a year and a half, two years, approximately.

Q. I take it, when you say a semblance you mean the picket line diminished as time went on?

A. Diminished to one.

Q. Diminished?

A. Diminished to one person. [1457]



(Testimony of William John O'Keefe.)

Q. To one person? A. Yes.

Q. Those were the days here in our fair city when we had an ordinance that limited the number of pickets? You recall that; do you not?

A. Yes.

Q. You wouldn't blame the Stove Mounters for obeying the law; would you?

A. I think in that case they bent over backwards.

Q. I beg your pardon?

A. I think in that particular case they bent over backwards to see they didn't infringe.

Q. Mr. Collins said they started out with 2000 pickets; is that correct?

A. I don't think we actually counted heads, but they enclosed about five acres of ground with a solid line.

Q. And I judge from what you say there were a few heads broken on either side.

A. Yes, there were.

Q. That is, the skin, I mean, on them.

A. Yes.

Q. Now, Mr. White, who was here and testified, but whom I don't see here now, tells me he was secretary of the Central Labor Council in the Bay District in Oakland at that time, and that he impaired your sales somewhat by enforcing the boycott against the O'Keefe and Merritt products in northern California during that strike. Do you recall that? A. Yes, I do.

Q. It had some effect on the company's sales?

A. A very considerable effect.

(Testimony of William John O'Keefe.)

Q. You knew enough about the situation to realize that once the war was over the boycott might begin to commence to exert an effect upon the sale of the peace time products?      A. That is right.

Mr. Nicoson: I object to that as calling for a conjecture of the witness.

Trial Examiner Kent: Read the question.

(The record was read.)

Trial Examiner Kent: I think, in view of the witness' position with the company and past experience, he may answer.

Mr. Nicoson: He already answered.

Q. (By Mr. Garrett): How long has Mr. Spalino been on the O'Keefe and Merritt payroll?

A. Which one?

Q. Charlie.

A. I couldn't say exactly. I have been there approximately 15 years and he was there when I got there.

Q. Is he working for the company now or for Pioneer?

A. He is working for O'Keefe and Merritt Company.

Q. What department? [1459]

A. The last time I saw him he was in the service department.

Mr. Collins: I will offer to stipulate, Mr. Garrett, he is now working in the shipping department.

Mr. Garrett: Today?

Mr. Collins: Today he is working in the shipping department.

(Testimony of William John O'Keefe.)

Mr. Nicoson: I thought there wasn't any shipping department.

Mr. Collins: There is now.

Mr. Garrett: I will stipulate Mr. Spallino is working today. At least I don't see him here in the court room.

Trial Examiner Kent: I thought the record did show that shipping was still O'Keefe and Merritt.

Mr. Collins: Ask him about the shipping department; he knows about it.

Trial Examiner Kent: Ask the witness. Let's get the record straight.

Q. (By Mr. Garrett): Is the shipping department operating at the present time?

A. It is.

Q. And those employees, are they carried on the O'Keefe and Merritt payroll?

A. They are.

Mr. Collins: I will offer to stipulate the Service Incorporated went out of business on January 20th and the [1460] employees of the Service Incorporated were taken over by the O'Keefe and Merritt Company.

I will further offer to stipulate Mr. Bob White is an expediter and has nothing to do with the shipping department at the present time. He was promoted as of January 20th.

Mr. Nicoson: I will go with you on your stipulation as to Service Incorporated. I don't know anything about Bob White, so I can't stipulate to that.

Mr. Collins: Ask him about Bob White.

(Testimony of William John O'Keefe.)

Q. (By Mr. Garrett): Now, this shipping department, that is carried in connection with the O'Keefe and Merritt business; is it not?

A. That is correct.

Q. That is where the stoves go out from, I take it.

A. Yes.

Q. This union that was formed, Stove Mounters Local Union, in 1936 or 1937, did you know their officers?

A. I think I did, yes. I did know them at the time. I am not sure I would remember all of them.

Q. Did they attempt to negotiate as a union with the company prior to the strike?

A. Not to my recollection.

Q. Were there various proceedings here before this Regional Board brought by them against the company?

A. There were proceedings brought at the time.

Q. Proceedings relating to this charge and that sort of thing?

A. Something along that nature. I don't remember the details.

Q. As a matter of fact, there were many such proceedings here; were there not?

A. O'Keefe and Merritt Company have at various times in the past 10 years been here for some reason or other.

(A short recess was taken.) [1462]

Trial Examiner Kent: Proceed.

Q. (By Mr. Garrett): Can you say of your own knowledge that it is not a fact that some of

(Testimony of William John O'Keefe.)

those charges filed by the A. F. of L. in those days are not still unadjudicated and pending here against the company? A. I don't know.

Q. That could be a fact? A. It could be.

Q. But at any rate you knew of those unfair labor practice charges at the time the CIO came in and tried to organize the plant in 1945, is that a fact?

A. I am afraid I don't understand the question.

Q. You knew of the existence of unfair labor practice charges by the A. F. of L., did you not, when the CIO came in and tried to organize the plant in 1945?

A. As I think I have stated, I don't know whether they had ever been written off the books or not. Whether they were still in existence is something I wouldn't be prepared to state.

Q. As a matter of fact, the CIO didn't display any interest in the plant at all, did they, until the war came along? A. No obvious interest.

Q. You are familiar with the contract now existing, I take it, Mr. O'Keefe, between the Pioneer co-partnership and the [1463] A. F. of L.?

A. In a very general way, yes.

Q. You are familiar with the fact that that contract has a no strike clause in it ?

A. That is correct, yes.

Q. You knew, did you not, Mr. O'Keefe, that as long as that contract continued, the A. F. of L. would not strike the Pioneer co-partnership, did you not?

Mr. Tyre: That is objected to.

(Testimony of William John O'Keefe.)

Mr. Nicoson: Objected to. That calls for a legal conclusion, and also an interpretation of the contract.

Mr. Garrett: I just want to show the parties that an adjudication in favor of the company in this action will put the A. F. of L. in a position where they on the one hand are bound by a contract which they intend to observe, and which prevents them from continuing their economic measures against this company, whereas the CIO unions, interlopers on the face of the record, will be enjoying whatever benefits accrue from representing the employees in the company.

Mr. Tyre: I take it if the Board orders this company to withdraw recognition from the A. F. of L. Union, the contract will be a nullity and the A. F. of L. will obey the order of the National Labor Relations Board.

Mr. Nicoson: That is a legal conclusion which this witness cannot in any event make. [1464]

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Garrett): You expect the state court to enforce this contract you have entered into in good faith with the A.F.of L., do you not?

Mr. Tyre: I object, calling for a conclusion.

Mr. Nicoson: Same objection.

Trial Examiner Kent: The objection is sustained. I think that can be covered quite well by argument.

Q. (By Mr. Garrett): Did the A.F.of L. organ-

(Testimony of William John O'Keefe.)

izing attempts continue after the strike in 1936, 1937, and up until the time of the war?

A. I believe they made some attempts.

Q. You saw Mr. Petro frequently during that period, did you not?

A. Yes, he was around the plant quite often.

Q. Attempting to organize, or do you know what he was doing?

A. I didn't know what he was doing. I would presume he was organizing.

Q. Do you recall anything being said at that first conversation in Mr. Collins' office when Charlie Spallino was there complaining about his workmen's compensation case, do you recall anything being said at that time about his having gone to a C.I.O. meeting?

A. No.

Q. At that time Mr. Spallino has testified the Five and Over Club [1465] was fighting the unions, is that correct?

A. The Five and Over Club conducted their business, as far as I know, to suit themselves as any other private organization would do. The company had absolutely nothing to say in any matter of how they conducted their own personal business.

Q. It is an independent association that has its own officers?

A. That is true. At various times the Five and Over Club have done things which were beneficial to O'Keefe and Merritt Company, but always thoroughly through their own volition, never at any request of ours.

(Testimony of William John O'Keefe.)

Q. They have in their membership in the Five and Over Club, do they not, not only production workers, but office workers?

A. They have in their membership anyone who has been associated with O'Keefe and Merritt Company in excess of five years.

Q. Those persons are eligible, and do they automatically become members of the Five and Over Club or only on application?

A. They only become members if they put in their application and go through the due process of initiation and begin paying their monthly dues, as everybody else does.

Q. And the Five and Over Club, how long has it been in existence?

A. I would judge 11 to 12 years.

Q. Did it come into existence before the strike?

A. About between two and three years, I believe, before the strike.

Q. How did that club come to be organized?

A. When the club was organized, I believe the thought in back of it was my father's. A number of accidents had occurred to some of the people in the plant which were non-compensable, and at that time I didn't believe that the average fellow working in a plant carried any kind of hospitalization or insurance outside of something that had been participated in with the company. So my understanding of it was that—and I am sure this is the correct idea—that the club was started with the idea of paying benefits to those people out of the



(Testimony of William John O'Keefe.)

club treasury which would in some way carry them over any short non-compensable accident period that they might have, and at the same time it was organized, any officer or financially participating member of O'Keefe and Merritt Company was excluded from membership, except on an honorary basis.

Q. How many employees went out at the beginning of the strike?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: The answer may be taken.

The Witness: We are discussing the strike of 1937 and 1938, whenever it was, around there?

Q. (By Mr. Garrett): Yes.

A. As I remember, there were approximately 35.

Q. Was Johnny Lovasco one of them?

A. I don't remember.

Q. Was Kenneth Petro one of them?

A. Yes. I might qualify that answer. I know that Petro was in the picket line at all times. Whether he was on the table at that moment, I don't know.

Q. Those were the days when a man went out on strike, he was not an employee any more, is that your understanding?

A. I think that was the general practice in Los Angeles at the time.

Q. Are the O'Keefe and Merritt employees at the present time compensated on any piece work or bonus basis?

A. The only employees that O'Keefe and Merritt

(Testimony of William John O'Keefe.)

have at the present time are truck drivers, service men, and maintenance workers, and there is no basis on which we know how to fit that on a piece-work or bonus basis. [1468]

Q. Prior to February 4th of this year did O'Keefe and Merritt operate any piece work, bonus or division of profit system?

A. O'Keefe and Merritt always operated in any way, shape or form that was possible a bonus or piece work system of some sort.

Q. Immediately prior to the date I have mentioned, February 4th, 1946, what type of system was being operated?

A. We used both the group bonus plan and a straight piece work or output per hour plan for an individual worker.

Mr. Tyre: May I have that answer read?

(The last answer was read.)

Q. (By Mr. Garrett): Did you compute your piece work compensation on what is known as the Bedeaux system?      A. No.

Q. That is, registering the number of normal hours required for a given operation and then paying premiums for production over that?

A. We did not do that on the individual piece work basis, but that was basically the theory on which we set up most of the group bonus plans.

Q. I take it the Pioneer Electric Company is not operating any piece work system at the present time?

(Testimony of William John O'Keefe.)

A. I believe they are using piece work. To the best of my knowledge, they are using piece work in some of the [1469] individual operations. I believe there are two small group bonus plans, but as far as the actual stove mounters and assemblers are concerned, there is none.

Q. Straight hourly wages?

A. That's right.

Mr. Garrett: No further questions.

#### Redirect Examination

By Mr. Collins:

Q. What does Bob White do at the present time?

A. Bob White at the present time would be the co-ordinator between the sales department and the shipping department.

Q. Do you know when the employees of Service Incorporated, went to work for O'Keefe and Merritt Company?

A. Sometime toward the end of January. I don't remember the exact date.

Q. Of what year? A. 1946.

Mr. Collins: That's all.

#### Recross-Examination

By Mr. Nicoson:

Q. Do you know who the officers were in Service Incorporated?

A. To the best of my knowledge—well, I guess

(Testimony of William John O'Keefe.)

I would have to answer no. It is a corporation. I don't know what it is.

Q. Are you an officer? [1470]

A. No. I missed that.

Q. Do you know whether your Dad was an officer or not?      A. I know he was not.

Q. He was not?

A. I think I can safely say that no one connected with O'Keefe and Merritt Company was an officer of Service Incorporated.

Q. By that do you include owning the stock in Service Incorporated?      A. That's right.

Q. You say they had connection?

A. We had no connection. As far as I know, no one holding officer's capacity in O'Keefe and Meritt Company had any stock or any connection with Service Incorporated.

Mr. Nicoson: That's all.

Q. (By Mr. Tyre): Just a minute, I would like to ask you a few questions. What is your capacity at the plant, that is what was it at O'Keefe and Merritt?

A. When you say "What was it," how far back do you intend to go?

Q. Let us say for the past two years.

A. For the past two years?

Q. Yes.

A. We don't have any titles around O'Keefe and Merritt Company. I suppose in the ordinary organization, I would [1471] be either the plant superintendent or a general manager, or something of that type.

(Testimony of William John O'Keefe.)

Q. You are familiar, I take it, from the answers you gave to Mr. Garrett's questions concerning these group bonus plans and the piece work system—

A. How do you mean "familiar"?

Q. You are familiar with how they are worked out and the basis for them, is that correct?

A. That's right.

Q. Did the group bonus that an employee would receive vary from week to week, or was that constant?

A. It would vary from day to day.

Q. Was the employee paid by the day or by the week?

A. By the week. His earnings, however, were computed by the day.

Q. Was an employee given a guaranteed hourly rate for the week?

A. The employee was given a guaranteed hourly rate by the hour.

Q. And it was paid by the week, that guaranteed hourly rate, is that right, times forty for the normal hours he worked?

A. Not necessarily. It would be the number of hours he worked.

Q. In other words, at the end of the week, you would compute [1472] the number of hours that the employee worked, and multiply that by his guaranteed hourly rate, and if that was less than he would have earned under the bonus plan, you paid him what he would have earned under the bonus plan, rather than the straight hourly rate?

(Testimony of William John O'Keefe.)

A. I didn't say that.

Q. What is the fact?

A. As I stated before, the bonus plan is operated on a day to day basis, and he is guaranteed an hourly rate for the amount of hours he is there for any one particular day. At the end of that week, that is added into a total for the number of days he has shown up that week, and he is paid on that basis.

Q. Let me put it this way. Let's assume a worker is on a dollar per hour basis, that the worker works 48 hours that week and has no bonus plan in effect. You would have paid him \$52.00 for that week, is that correct?

A. Less his insurance—

Q. Less the usual deductions for unemployment and social security and so forth?

A. That is the common practice, yes.

Q. On the assumption that that same worker the following week was a group bonus plan of some sort, by which bonus plan he would have earned 20 cents an hour more than a dollar per hour, averaged over the week, he would then, I [1473] take it, have received \$1.20 per hour multiplied by 48, would that be right?

A. That is not correct. I would be glad to give you an hour long dissertation on how we do it.

Q. I don't want an hour long dissertation. I would like to know briefly, if you can tell us, how you actually determine when a man was entitled to his minimum guaranteed hourly rate, and when he would get more than that.

(Testimony of William John O'Keefe.)

Mr. Collins: Objected to, incompetent, irrelevant and immaterial.

Mr. Tyre: This matter has been gone into on both direct and on cross by Mr. Garrett, and I want to know the actual facts.

Mr. Collins: Mr. Garrett did not have this man on direct examination. He cross-examined him.

Trial Examiner Kent: You may take the answer.

The Witness: The bonus is figured daily. At any time or any given period, the man is guaranteed his base rate, which I think is a state law. I am not sure, but I believe it is. If for one day he averaged 50 cents an hour on his bonus plan over and above his hourly rate guaranteed, he would be paid that for that day. If on the second day, for some reason, either his troubles or troubles beyond his control, he came up with 50 cents less than his hourly guaranteed rate, we still paid the guarantee for that one day, so as an average for the two days, he had then made, we would pay half of his bonus. [1474]

If, however, he had made 10 cents on the second day, he would have been paid the \$1.10 average for that day. So his check at the end of the week would be a computation of all the days on which he had failed to make bonus or worked on some job not paying bonus, it would be computed for those days or hours at his base rate, and the days or hours on which he had put in a successful time on the bonus or piece-work basis, he was given credit for that. At no time was any deduction ever made for any

(Testimony of William John O'Keefe.)

loss on falling below the standard rate. We didn't average it at any time.

Q. (By Mr. Tyre): Was it the practice of your company to pay at the rate of time and a half beyond 40 hours?

A. We pay time and a half beyond 8 hours a day and beyond 40 hours in a week, except when it was a week in which a holiday came, and then we paid time and a half beyond 32 hours. I believe that is a federal law.

Q. When you pay time and a half beyond 40 hours in any week, did you pay that on the basis of the man's guaranteed hourly rate?

A. If a man was working at a straight hourly job, we pay time and a half on his hourly rate. If he was working on a job where over the period of the week he had worked on some piece work or bonus in which he exceeded his hourly rate, I believe the federal law provides that he must be paid time and a half on his average hourly earnings. [1475]

Q. A man with a \$1.00 base rate was able with a bonus to earn \$1.20 an hour, then the time and a half for the hours worked beyond 40 was figured on the \$1.20?

A. That is the law.

Q. I am asking you if that is what you did?

A. I am sure we would comply with the law, and I think that it what we did.

Q. I take it the same plan was followed for the individuals on straight piecework?

A. That is correct.

Mr. Collins: I don't like to interpose objections, but—



Mr. Tyre: That is all I have.

Mr. Garrett: I was going to ask him what the attorney made per month. That is proper cross-examination. You opened it.

Mr. Collins: Go ahead. Whatever I got, I got it for doing nothing, until this trial came on, I think. Is everybody through with the witness?

Mr. Garrett: No questions.

Mr. Nicoson: I don't have anything further.

Mr. Tyre: That's all.

Mr. Collins: You may step down.

Trial Examiner Kent: You may be excused.

The Witness: Thank you.

(Witness excused.) [1476]

Mr. Collins: Mr. John Lovasco.

### JOHN LOVASCO

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Collins:

Q. When did you first go to work for O'Keefe & Merritt Company? A. April 22, 1936.

Q. When did you first join the American Federation of Labor, if you did?

A. Oh, sometime, I would say, in about August of 1936.

Q. Were you an officer of the American Federation of Labor?

(Testimony of John Lovasco.)

A. Yes, I was one of the officers.

Q. What office did you hold?

A. Well, I was—I don't recall now right offhand whether I was treasurer or sergeant-at-arms. I really don't know. It has been 10 years ago.

Q. When they went out on strike, did you get out and get on the picket line?

A. That particular time I come down with sinus trouble, which I have, and I was out about, I believe, 10 days.

Q. Were you in the Armed Services during the war? A. Yes.

Q. Did you work for O'Keefe & Merritt until the time you joined the—what branch of the Service were you in? [1477] A. United States Navy.

Q. Were you working for O'Keefe & Merritt up until the time you joined the Navy?

A. Yes.

Q. When did you come back from the Navy?

A. I returned back to O'Keefe & Merritt April 23, 1945.

Q. 1945? A. That's right.

Q. What did you do concerning your union activities then?

A. Well, I immediately took hold of where I left off.

Q. What do you mean by that?

A. Well, where we left off in 1936. I saw that Los Angeles had become very union-minded, so I thought, well, I better get in and pitch for my side of the blood.

(Testimony of John Lovasco.)

Q. Did you contact anybody in the plant to help you work? A. Yes.

Q. Whom did you contact?

A. Charlie Spallino.

Q. Did anybody from the company tell you to contact Charles Spallino? A. No, sir.

Q. Did anybody from the company tell you to organize the union? A. No, sir.

Q. Did anybody from the company, as a matter of fact, know [1478] that you were organizing the union? A. No, sir.

Q. Calling your attention to the first day of October, 1945, or thereabouts, did you and Mr. Charlie Spallino have occasion to go into the office of Mr. D. P. O'Keefe, the president of the O'Keefe & Merritt Company? A. Yes, I did.

Q. Will you relate what transpired?

A. Well, Charles Spallino, being the president of the Five and Over Club, wanted Mr. O'Keefe's version of which side the Five and Over should sponsor.

Q. Which side of what?

A. What do you mean?

Q. Between the Catholic Church and the Masonic Lodge, or what?

A. Oh, the unions, the A.F.of L. and the C.I.O.

Q. And what did Mr. O'Keefe say to you?

A. Well, Mr. O'Keefe stated that it would be best if we kept our noses clean.

Q. Did he use those words?

A. Well, somewhere to that effect. I don't just quite remember.

(Testimony of John Lovasco.)

Q. What else did he tell you? Did he tell you to go out and organize either union?

A. Oh, no. [1479]

Q. What did he state about union activities, if anything?

A. Well, he didn't want any part of either unions.

Q. Didn't want any part of either union?

A. That's right.

Q. Instead of saying he didn't want them, will you state exactly what he said; what were his words, as best you can remember?

Mr. Tyre: Will you read that answer back there?

(The answer was read as follows: "Well, he didn't want any part of either union.")

Mr. Collins: Now, will you read the pending question?

(The last question was read.)

The Witness: The best I can remember right now is that Mr. O'Keefe said that he would rather not join any union, but if he had to, or the men had to, why, he was in hopes that they would pick out the A.F.of L. for the simple reason that they had been on the unfair list for so many years and they wanted to get off the unfair list.

Q. (By Mr. Collins): Was there any intimation that—did he say anything concerning what might happen to the men if they did or did not join either union?

A. No, he didn't say anything.

(Testimony of John Lovasco.)

Q. Was there any mention of my name in that conversation?

A. No, not at that particular conversation, there wasn't.

Q. Did you have any other meetings with Mr. Charlie Spallino [1480] and yourself in Mr. O'Keefe's office in which my name was mentioned?

A. Yes.

Q. What did he tell you in that connection?

Mr. Tyre: Object until there is a proper foundation laid.

Q. (By Mr. Collins): When was this conversation? A. There was a——

Trial Examiner Kent: And who was present?

Q. (By Mr. Collins): When was the conversation and who was present?

A. Well, present were Charlie Spallino, myself, and Mr. O'Keefe.

Q. Was his secretary there?

A. I don't recall.

Q. Was that before or after this first conversation you told us about? A. That was after.

Q. All right. Now, what happened at this meeting?

A. Well, that was the time when Charles Spallino wanted to give a speech at the Five and Over Club meeting the night of the election.

Mr. Tyre: I move that be stricken, your Honor, not responsive.

Q. (By Mr. Collins): Don't use the words "Charlie Spallino wanted to give a speech." Just relate what the conversation was. [1481]

(Testimony of John Lovasco.)

Trial Examiner Kent: Yes, just say what the various people said.

Mr. Tyre: I take it the motion to strike is granted?

Trial Examiner Kent: The motion to strike is granted.

The Witness: Well, at first before he was in Mr. O'Keefe's office, I had Charlie Spallino and myself go up to see Collins, because Charlie Spallino or myself don't really know how to get out and make a speech, so we scribbled a few words down to see whether it would be suitable to Mr. Collins, and Mr. Collins said that he didn't want to interfere, if we wantd to go ahead and make a speech, why, it was perfectly all right.

When I saw Mr. Collins wouldn't help us, I suggested to Charlie that we go down and see Mr. O'Keefe and see what he thought of it.

Q. And what did Mr. O'Keefe say to you?

A. Mr. O'Keefe glanced at the little slip of paper we had there, and he immediately threw it in the waste basket and said that he would get out and make a speech himself.

Q. Did he state whether or not he considered the matters that you had on your notes there appropriate to talk about at the Five and Over Club meeting? A. No, he didn't.

Q. Did he say anything about whether he wanted to take any [1482] action so far as your Five and Over Club activities were concerned? A. No.

(Testimony of John Lovasco.)

Q. Did you ever have any conversation with me in my office concerning union activity?

A. Yes.

Q. What did I tell you?

A. Well, there was a——

Q. Just a moment. Was Charlie Spallino present at any of these conversations?

A. There is one time, yes, Charlie Spallino was present.

Q. What did I say?

Mr. Tyre: Just a minute. When was this conversation?

The Witness: It was the night before the election.

Q. (By Mr. Collins): Relate the conversation.

A. Well, I just stated that a few minutes ago here, that we brought this slip of paper up there to you, and we wanted your advice whether it was the correct thing to talk about, and you said you wouldn't interfere. So then we went down to Mr. O'Keefe's office.

Q. Did I ever tell you, either alone or in the presence of Mr. Charles Spallino, that the company wanted to take sides for either union?

A. No.

Q. Did I ever tell you, or in the presence of Mr. Charlie Spallino, that [1483] any action would be taken against anyone who would join either union?

A. No.

Q. Did I ever tell you, yourself, or in the presence of Mr. Charlie Spallino, that the employees could join any union they wanted to?

(Testimony of John Lovasco.)

A. What was that again, please?

Q. Did I tell you—

Mr. Tyre: Just a minute now.

Mr. Collins: Read the question.

Mr. Tyre: Just a second before you read it. Mr. Examiner, I think you heard it, and unfortunately, perhaps, the witness hasn't, but I object to that because it is leading and suggestive.

The Witness: Could I have the reporter read the question?

Mr. Tyre: Just a second on that.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Was any mention made in any of your conversations with me, either when you were alone with me or in the presence of Mr. Spallino, regarding what the attitude of the company would be toward your joining or anybody joining a union? A. No.

Mr. Tyre: Object to any conversations where Mr. Spallino was not present, and only this witness and Mr. Collins [1484] were present. It certainly can't be binding on the C.I.O. Let him testify as to a conversation where Mr. Spallino was present, if anything was said.

Q. (By Mr. Collins): Calling your attention to the first day of October, 1945, in my office in the presence of Mr. Charlie Spallino, Mr. Charlie Spallino has testified that he went to my office with John Lovasco and Collins said, "Yes, naturally, we want the American Federation of Labor. The C.I.O. are a bunch of radicals," and so forth. Did you



(Testimony of John Lovasco.)

or did you not overhear such a conversation in my office? A. I did not.

Q. Did I ever say anything like that to you or to Mr. Charlie Spallino?

A. Not that I know of.

Q. You would have heard it if you were in there if it had been said?

A. If I was in there with Charles, I must have heard it, but I did not hear it.

Q. Now, on October 1, 1945, did you know of any C.I.O. activity around the plant at all?

A. No.

Q. Calling your attention to a meeting in Mr. O'Keefe's office at or about this date, Mr. Charlie Spallino testified Mr. O'Keefe told you to go see Mr. Collins, that they want off the American Federation of Labor's unfair list. Do [1485] you recall any such conversation as that? A. No.

Q. Did Mr. O'Keefe ever tell you to go see Collins about union activities? A. No.

Q. Did I ever direct you in any of your organizing activities in the O'Keefe and Merritt plant?

A. No.

Q. Calling your attention to another conversation that is alleged to have taken place in my office on the telephone at a time when Red Roberts and Joe Spallino and yourself were present and Charles Spallino—Joe and Charlie Spallino were present, Mr. Charlie Spallino stated on direct examination, I believe, to this general effect: That Collins said to Despol over the telephone, "We will lay off

(Testimony of John Lovasco.)

anyone who organizes on company time, that I do not know"—Collins did not know—"Any organizing was going on." Do you recall such a conversation?      A. No.

Q. Did I ever tell you what would happen to you or anyone else who was organizing any union on company time?      A. No.

Q. Did you ever punch out when you were doing your organizing activity for the union?

A. No.

Q. So far as you know, did anybody in the O'Keefe and Merritt Company or the Pioneer Electric Company, for that matter, [1486] know that you were doing any organizing for a union?

A. Did anyone know that I was organizing?

Q. Any of the officers, foremen, and so forth?

A. No.

Q. Do you recall attending a meeting in my office sometime the latter part of December, at which John Despol and several employees of the O'Keefe and Merritt Company, as well as yourself, were present, a meeting that took place after 4:30, after working hours?      A. Yes.

Q. Did Mr. Despol ever tell you he didn't want you to attend any meetings?      A. Yes.

Q. What did he say to you?

A. This was after I had already attended that meeting there, and it was, I believe, when they had put on their first demonstration, or so-called picket line, out there, that he, after the 8:00 o'clock whistle blew, why, naturally, I was coming in, straggling

(Testimony of John Lovasco.)

in a little late that morning, and he greeted me on a side street, and he says, "John," he says, "I don't want you to attend any more meetings, that Collins and I want to discuss this contract over."

I says, "As long as there is going to be a contract discussed," I says, "I will be there or other A.F.of L. members will be there to see that nothing is pulled."

So he then grinned at me and he says, "Johnnie, I like you very much." [1487]

I says, "I like you, too."

And he says, he told me, he says, "I don't want anything to happen to you."

I says, "I don't think anything is going to happen to me."

Q. Happen to what?

A. Happen to me. He says, "Well, we get means and ways of taking care of fellows like you."

Then, I says, "If you have, you take care of yours and," I says, "but I will take care of mine," and I walked away.

Q. Getting back to this first meeting we are talking about in the latter part of December, 1945, do you recall Mr. Despol presenting a contract, opening up negotiations concerning a prospective contract between the C.I.O. and the employees of O'Keefe and Merritt Company?

A. Yes. He had a contract there in his hands, and I believe Fred Rotter had another one in his hands, you had one on the desk, and Joe Sanchez had another copy of the contract.

(Testimony of John Lovasco.)

Q. There were several employees, in addition to myself and Mr. Rotter, there were several employees?  
A. That's right.

Q. Employees like yourself that had no official capacity there?  
A. That's right.

Q. Were all of the members of the A.F.of L. employees? [1488]

A. All the fellows I had up there were members of the A.F.of L.

Q. How about this Doyle?

A. Wait. I recall that. Doyle was not. I just about had him sold.

Q. You thought he might join?

A. That's right. I was still doing a little work on him.

Q. Was there any mention made of the Pioneer Electric Company at this first meeting?

A. Yes, there was.

Q. What did I say and what did Mr. Despol say?

A. Well, at the beginning of the meeting there, why, you pulled out the contract and says, "Well, I don't know whether there is much use of reading this contract over or not for the simple reason that there might be another company come in, the Pioneer Electric."

John Despol said that he should have—pardon me, that he made a mistake, that he should have had the Pioneer Electric on that contract.

Q. On what contract?

A. On that C.I.O. contract that he presented you.

(Testimony of John Lovasco.)

Q. Did he state anything about the Pioneer in connection with an election?

A. Well, he didn't say that the Pioneer was on the election; there was just the O'Keefe and Merritt was on the [1489] election.

Q. Did he say whether or not he should have had the Pioneer in the election?

A. Yes, he said that is where he made the mistake, he should have had them on the contract.

Q. And when I told him the Pioneer might take over the manufacture of these gas ranges, then what did he say?

A. Then he stated that he wouldn't take it laying down, if I recall his right words now, and that they went through quite a large expense of organizing the O'Keefe and Merritt Company, and they wouldn't take it laying down.

Q. And what did I tell him when he said the union had spent money organizing O'Keefe and Merritt?

A. You said that you would discuss it with your clients to see if they would reimburse them.

Q. Reimburse them for what?

A. For the campaign they had out there.

Q. And what did he say?

A. Well, he said he didn't want to talk money now in front of his boys—he addressed us as boys.

Q. Did I go ahead and discuss the question of wages after that?

A. Yes, but he didn't want to talk money matters.

Q. Did we discuss the Gaffers & Sattler contract?

(Testimony of John Lovasco.)

A. The Gaffers & Sattler name was brought up, but there [1490] was nothing about the contract, but he again said he didn't want no money brought up, and that is when I drew my conclusion that Johnnie was fishing for something else.

Q. Did he mention anything about a strike?

A. Yes, he did. He said he probably would have to come out and save face and strike the plant.

Q. And what did I say about the strike?

A. Well, I believe your words was, instead of striking, to keep it peaceful, that you didn't want to see nobody get hurt or no violence around there, to take it to court and let the courts decide.

Q. Did I say anything about police protection?

A. Yes, you did. You said that the police would get the men through.

Q. Was this question of organizing expense, reimbursing for the organizing expenses, was there anything said in connection with that and taking the action to court?

A. That all came up at the same time there.

Q. I don't believe the record is clear. Will you explain that? What do you mean by "It all came up at the same time"?

A. Well, when Johnnie said he wouldn't take this laying down, that he would have to strike the plant, then you said there would be police protection out there to get the men through, and I had already informed the A.F.of L. men that there was going to be a demonstration out there, and I said, [1491] "We want all members here protected." So they got their men out there and—

(Testimony of John Lovasco.)

Q. Was there anything said about the question of shutting off steel? A. Yes, there was.

Q. What was said about that?

A. Despol stated that he would shut the steel off, and I believe you made the remark there that he couldn't shut off your steel for the simple reason that you people had been buying steel through different concerns that they didn't know anything about and could never shut it off.

Q. Did I make any mention of a jurisdictional struggle between the A.F.of L. and C.I.O.? You don't understand the question.

A. No, I don't believe I understand you.

Q. I will withdraw that question. Did I state to Mr. Despol what I expected in exchange for any reimbursing of organizing expenses if my client were willing to put it up?

Mr. Tyre: Just a minute. I object to that as leading and suggestive. Let him state, if he knows, the entire conversation at that meeting in his own words, and not in Mr. Collins' words.

Trial Examiner Kent: Unless the witness' recollection is exhausted, I don't think you have laid a foundation.

Mr. Nicoson: I was about to suggest if this is done [1942] under the guise of refreshing the witness' recollection, his recollection is pretty faulty, because for the last 15 minutes he has been putting nothing to him but questions suggesting the answers. I thought probably that might be the reason he was doing it, so I did not object, but I am going to

(Testimony of John Lovasco.)

object now, because I think it is leading and I don't think it is proper.

Trial Examiner Kent: Reframe the question.

Mr. Collins: I don't think this man needs to have his recollection refreshed. The only thing is he has testified to conversations here and there and I am trying to get him to put it all together.

Mr. Tyre: You are telling him.

Q. (By Mr. Collins): State the conversation between myself and John Despol after I told him that the Pioneer Electric Company might be taking over the manufacture of those gas ranges, state everything he said and that I said. I want the whole conversation. You can even repeat things you have already said. Just start all over again and give us the conversation.

A. Well, that is it. I am going to have to repeat here, because he said he wouldn't take it laying down now that Pioneer is taking it over.

Q. Go on.

A. And to save face, he would have to strike, he had a few [1493] employees in there that he would have to strike the plant.

Q. Yes, go on.

A. And you said that you would have police protection out there and that the men would get to work. I called up the A.F.of L. representative and told him what was taking place.

Q. Don't talk about what you did after you got out of the meeting. Just tell me what else happened in this meeting.



(Testimony of John Lovasco.)

Mr. Collins: Mr. Trial Examiner, I submit it is very unfair to attempt to hold this witness down to relating a conversation that took place in my office. I believe it has been testified Mr. Despol came in at about 4:30 and didn't get out until 5:15. To have this man relate a 45-minute conversation is very difficult unless I am able to segregate the portions I want him to talk about.

Q. (By Mr. Collins): Continue with as much of the conversation as you can relate, Mr. Lovasco. What was said in connection with this organizing expense?

A. Well, you told him that you would see your client and see if he could be reimbursed for the expense he had been through.

Q. If he would do what?

Mr. Nicoson: Well, here we are, going around and around again.

Mr. Tyre: There we go again, your Honor.

Trial Examiner Kent: That has been asked and answered.

Mr. Collins: It hasn't all been brought out yet.

Mr. Tyre: Collins has answered for him.

Mr. Collins: I am not the witness.

Trial Examiner Kent: Go ahead.

The Witness: If he would take the wolves away from the door.

Q. (By Mr. Collins): What else was said in that connection, if anything?

A. That he would keep it peaceful and quiet and that he would agree to take it to court.

Mr. Collins: You may cross-examine.

Trial Examiner Kent: I think we will adjourn until tomorrow morning at 9:30.

(Whereupon, at 5:00 o'clock p.m., an adjournment was taken until Thursday, March 28, 1946, at 9:30 o'clock a.m.) [1495]

Thursday, March 28, 1946

10:00 o'Clock A.M.

Trial Examiner Kent: On the record.

You said you knew Mr. Collins would be late, Mr. Garrett. I think we might proceed with the understand that I would appreciate it if anything new was brought out, that you will apprise Mr. Collins so that if he wants to further inquire on those matters he may have an opportunity to do so.

Mr. Garrett: So understood.

### JOHN LOVASCO

a witness called by and on behalf of the respondent, having been previously duly sworn, resumed the stand and testified further as follows:

#### Cross-Examination

By Mr. Garrett:

Q. Mr. Lovasco, when you had this conversation with Mr. Despol in which he told you that he had ways of taking care of fellows like you, where did that conversation take place?

A. It took place at the side entrance there at

(Testimony of John Lovasco.)

the O'Keefe and Merritt plant, half way between Olympic and employees' entrance.

Q. Did you thereafter attend any meetings in Mr. Collins' office at which Mr. Despol was present?

A. No, I did not myself.

Q. How many meetings in Mr. Collins' office did you attend, meetings at which Mr. Despol was present? [1500]

A. One.

Q. You have already testified about what was said at that meeting?

A. Yes.

Q. How long after that meeting was it that you had this conversation with Mr. Despol in which he told you that he had ways of taking care of guys like you?

A. I believe that it was about a week or ten days.

Q. Did you hear the testimony of Mr. Charlie Spallino as to the occurrences on the day of the election? Did you hear that?

A. Which election is that?

Q. The N.L.R.B. election.

A. I don't quite understand you.

Q. Were you present when Mr. Charlie Spallino testified as to what you did and what he did on the day of the N.L.R.B. election, that is, November 20, 1945?

A. Was I present here in court, you mean?

Q. Yes. A. I was present then.

Q. You heard his testimony, did you?

A. Yes.

Q. Did he have any written notes for the speech he made on that day at the Five and Over Club meeting?

(Testimony of John Lovasco.)

A. I had the note that I wrote up myself, and Charlie [1501] looked it over and he said he was not much of a spokesman and he could not recite what we had written down there, and he thought that he would get it all jumbled up and make a mess of it, so I volunteered to make the speech.

Q. Did you and he then leave the plant before you returned to the Five and Over Club meeting?

A. Yes, sir.

Q. Did either one of you require any permission to leave the plant?      A. No, sir.

Q. Do you recall at the Five and Over Club meeting the substance of what Mr. Charles Spallino said to the membership, that is, the meeting on the day of the N.L.R.B. election?

A. I recall him opening the meeting, but I don't know exactly what he said because I was just thinking over what I would tell the boys on my speech. So I really don't know what Charlie Spallino stated.

Q. Do you recall who spoke at that meeting?

A. Yes, Charles Spallino and I.

Q. Was it a regular membership meeting of the Five and Over Club?      A. Yes, sir.

Q. Was the floor open for anyone who desired to speak?      A. Yes, sir.

Q. Did you speak there as a representative of the company [1502] or as a member of the A.F.L.?

A. No, I spoke there as a member of the Five and Over Club.

Q. At that time were you affiliated with or had you made application to join the A.F.of L.?

A. Oh, yes.

(Testimony of John Lovasco.)

Q. What union, the Stove Mounters?

A. Yes, sir.

Q. Is that the same union you had belonged to in 1936 and 1937? A. Yes, sir.

Q. Did you hear Mr. Spallino's testimony you were present at the meeting of yourself and Mr. Collins and Mr. Spallino, in Mr. Collins' office, at which Mr. Collins said something about going out and signing up certain members of the Five and Over Club, 25 old members and 25 new members?

A. I recall Spallino making that statement here, yes.

Q. Is that true?

A. I didn't hear that in Collins' office.

Q. Did you ever hear that said anywhere?

A. No, sir.

Q. Or did anyone ever tell you to go out and get 25 or 50? A. No, sir.

Q. Did you notice any change in Mr. Spallino's attitude toward the A.F.L.? A. Yes. [1503]

Q. Was that before or after he was defeated for re-election as president of the Five and Over Club? A. After he was defeated.

Q. Did he talk to you about that?

A. Yes, sir, we had a little talk about that.

Q. Where was that and when?

A. That was right in front of the lunch stand, just about a minute to 12:00.

Q. On the day of the election?

A. No, it was sometime after the election, about two days, two or three days afterwards.

(Testimony of John Lovasco.)

Q. I don't mean the N.L.R.B. election.

A. No, I mean the Five and Over election. That is what I am talking about.

Q. When was the Five and Over Club election, about?

A. I believe it was held the second or third week in December.

Q. Was there anyone present there when you were talking to Mr. Spallino besides you two?

A. No, just Charles and I.

Q. What did he tell you about the change in his attitude, if anything?

A. Well, he went on saying how the Five and Over Club members let him down, and that now that he is out of the Five and Over he says, "I will get even with some certain sons of bitches." [1504]

Q. Did he tell you who he referred to in that connection?

A. No, I asked him, I says, "Charlie, do you mean me? I happen to be a Five and Over member."

He says, "No, Johnny, I don't mean that for you."

I says, "I am glad that we understand each other there."

Q. Did he tell you he had a definite program for getting even with somebody?

A. That is right.

Q. Thereafter did he openly work against the A.F.of L.?

A. I don't recall Charlie ever working after

(Testimony of John Lovasco.)

that for the A.F.of L. He stated in his own words that he had been C.I.O. all along and he didn't give a damn who knows it now, and I says, "Well, I am sorry that you feel that way," I says, "in a way I am glad I found you out now."

Q. Were there two conversations which you were present at with Mr. D. P. O'Keefe at which his speech was mentioned, or only one?

A. I was present in Mr. O'Keefe's office, is that the question, with——

Q. Yes. Withdraw that.

You remember you testified yesterday that you were with Mr. O'Keefe when Charles Spallino handed him some copy and Mr. O'Keefe threw it away?

A. That is right. [1505]

Q. That copy did not relate to the Five and Over Club speech that was made on the day of the N.L.R.B. election, did it?

A. No, that note or paper, whatever he handed Mr. O'Keefe was one that we was going to make up in the Five and Over clubroom, either Charlie or myself, and Mr. O'Keefe threw it in the waste-paper basket and said that he would make a speech to the employees the next day. That was on election day. I believe the speech was at noon.

Q. I see. And then that paper with the copy on it, which was presented to Mr. O'Keefe at that time, the day before the election, was that intended to be a speech or a pamphlet, when you and Spallino took it there to him?

A. We were going to distribute those out in

(Testimony of John Lovasco.)

pamphlets. But then Charlie didn't want to be out there.

I said, "Well, if we make these up in pamphlets, you and I will be out there to hand these out."

Charlie didn't want to be one of the men to hand them out, so I said, "We will make a speech of it."

Q. In any event, that copy which you handed to Mr. O'Keefe had nothing to do with the speech that was actually made at the Five and Over Club; did it?      A. Oh, no.

Q. In 1937 and 1938, you testified yesterday that you recalled you had been an officer of some kind in the Stove Mounters Local Union [1506] at the plant. Isn't it a fact that you were on the shop committee?

A. Now, that you refresh my mind, I believe that is the truth; I was on the shop committee.

Q. Are you on any committee or do you hold any office in the Stove Mounters Local at the plant at this time?      A. At this time, no.

Mr. Garrett: No further questions.

Q. (By Mr. Nicoson): With respect to this first meeting you had in Mr. Collins' office, where Mr. Despol was present, I believe you now testify you only attended one meeting; is that correct?

A. That is correct.

Q. When did that occur?

A. The exact date I don't know, but it was sometime the later part of December or the first part of January, the first week in January; somewhere in that neighborhood.



(Testimony of John Lovasco.)

Q. Was it your recollection it was after Christmas?  
A. Yes, it was after Christmas.

Q. Who was present at that meeting?

A. There was Mr. Collins, Mr. Despol, Mr. Fred Rotter, Joe Sanchez, Frank Doyle, myself and, oh, Joe De Rose.

Q. Now, were there two meetings when you had an A.F.L. committee present, with Despol and Collins?

A. Were these two meetings that night, you mean? [1507]

Q. No, were there two at any time.

A. Yes, I had representatives in both meetings, the first and second meeting.

Q. Was it the first one that you arranged that you attended, or was it the second one?

A. It was the first one, to my knowledge, that I attended.

Q. The first one that you attended?

A. That is right.

Q. And then the next time the A.F.of L. committee went up, as you term it, that was later, is that correct?

A. That is right. That was after I was threatened.

Q. All right. Now, what was said at that meeting and who said it? Just give us the whole thing as you now remember it.

A. Well, it was in that office over there, the people I have mentioned. Mr. Despol walked in. They all said hello, and Mr. Despol started saying,

(Testimony of John Lovasco.)

“Well, shall we go ahead with this contract?” Mr. Collins, I believe, made the statement that he doesn’t know whether he has got a contract for him or not, and Despol wanted to know what he meant, and he says, well, it was that he had some little business with this Pioneer Company, they might take over the O’Keefe and Merritt product for them, and Despol remarked that he was kidding, and I believe Collins says, “No, that is truth.” And then is when Mr. Despol said he [1508] saw where he made a mistake, that he should have had Pioneer on the election and in this contract.

Q. Is that what he said?            A. That is right.

Q. Anything else you remember?

A. That is all I can recall now. Then they proceeded going through the contract.

Q. You say they did go through the contract?

A. They started going through the contract, yes. There were some they agreed to and some they did not.

Q. But that is all you can remember of what was said at that time?

A. No, there was one other, that there was quite a discussion there, that was maintenance and membership, and checkoff. There was a quite a discussion about that, and that is the one I was interested in, because Johnny wanted—wanted a closed shop. Then he was talking about——

Q. By Johnny, you mean Mr. Despol?

A. Mr. Despol.

(Testimony of John Lovasco.)

Q. We have two Johnnys here and I am trying to keep the record certain. A. That is right.

Q. Go ahead.

A. Then Mr. Collins started bringing up the wages and Mr. Despol stated he didn't want to discuss money matters before the boys. So later there was a discussion about [1509] Gaffers and Sattler's contract and I believe Mr. Collins mentioned one or two prices that he was sure of that they were getting over there, and he says he didn't want to talk money matters on this contract.

Q. Is that all you remember now?

A. Well, there was—when Despol—I don't know whether it was just before he got ready to leave or when, but he made the statement that if the Pioneer did take over he wouldn't take it laying down.

He said that they had been to a large expense of trying to organize the O'Keefe and Merritt plant, and that they might have to strike at it, at the O'Keefe and Merritt plant.

I believe Collins said then to keep it clean, they didn't want no strikes, and that he would have police protection out there for anyone that wanted to come through. He says, "Let's fight this thing out right and take it to court where nobody will get hurt."

I think Johnny agreed to do that. Then Collins said that he would take it up with his client, to see whether he could reimburse Johnny for his organizing expense.

There was one other thing. I believe Collins made the statement, he said, "If you keep the wolves

(Testimony of John Lovasco.)

away from the door," he says, "I will see my clients and see if they can reimburse you."

Q. Is that about it? [1510]

A. That is about all I can recall.

Q. How did you happen to go there in the first place, Johnny?

A. I found out that the contract had arrived at Mr. Collins' office, and I then went up and told Mr. Collins that if he didn't have anything to hide or anything like that, there was a large majority of A.F.L. membership out in the shop and we wanted to sit in on the meetings.

He, in turn, told me he didn't have anything to hide or anything to cover. He said, "You are welcome to bring up whoever you want."

Q. What I was trying to lead up to or get you to tell me was how you learned there was a contract presented?

A. I knew the contract would have to be delivered sometime, so whenever I saw Mr. Collins—I have occasion to go up there in the front office—and I would see Mr. Collins around there. I would ask him whether the contract had been delivered. He said, "No. No. No."

There was quite a time elapsed there. The contract hadn't got in. Finally one day it got in, so I told him then I wanted to attend the meeting.

Q. Mr. Collins told you he had been presented with the contract from the C.I.O.?

A. That is right.

Q. Did he also tell you that he had already had

(Testimony of John Lovasco.)

a meeting [1511] with Mr. Despol about the contract? A. No.

Q. Did you know that he had?

A. That he had had a meeting?

Q. With Mr. Despol about the contract, before you went up there with your committee.

A. I don't believe he told me anything like that, no.

Q. Well, the reason you didn't attend the second meeting, at that time the second A.F.L. committee went up there, was that because Despol scared you out?

A. Well, I wouldn't say exactly that he scared me out. But I have a little business of my own I do on the side, and I really had this meeting myself. There was some contracts that had to be signed, this partner and I. I thought, "Well, I will stay away this time and let—I will go around and pick out another group of boys to go up to this next meeting.

Q. You weren't afraid of Despol or what he could do with you?

A. When anybody makes a statement to me I just guard myself. I am not afraid of Despol himself personally, no.

Q. Pardon?

A. Not that I am afraid of Despol, personally, no; what he might do on the side.

Q. Now, let's get around to the time that you and Charlie [1512] went into Mr. O'Keefe's office with this leaflet or speech, or whatever you want to call it, and I believe you said at that time just three

(Testimony of John Lovasco.)

of you were present, Mr. O'Keefe and you and Charlie. A. That was the first.

Q. That was the one—

A. Is that the one you are referring to?

Q. The one that you were going to distribute, the one you just testified you and Charlie would have to stand out in front of the plant and hand out and the one he didn't want to hand out.

A. That is right.

Q. You remember that meeting, and there were just the three of you there, Mr. O'Keefe, Charlie and yourself, is that right? A. That is right.

Q. All right. Tell us what was said and done at that meeting, just everything you can remember.

A. That was the day before the election, and I asked Charlie to go up with me to Collins, to see what he thought about this here paper that we made up and see whether we was giving the boys the true light or whether we had made some mistakes in there, and we wanted to get that checked over. Mr. Collins would not interfere with it.

Q. What do you mean he would not interfere. What did he say? [1513]

A. He would not take sides, he would not even—in fact, he didn't even look at the paper. We stated that we had, Charlie and I, got this little speech or this pamphlet up to either distribute or make a speech out of it, and Mr. Collins found out what we was up to and he in turn said he would not have anything to do with it. Charles Spallino and I then came downstairs and went into Mr. O'Keefe's

(Testimony of John Lovasco.)

office and told O'Keefe what we had planned on doing, and Mr. O'Keefe did look at the paper, then he crumpled the paper and threw it in the waste-paper basket and said that he would make a speech to the boys the next day.

Q. Was there any discussion about the contents of that paper?

A. I don't believe there was any discussion.

Q. Mr. O'Keefe testified on cross-examination at page 1049 of the record: "Charlie submitted a paper to me with some reading matter on it. I read it and I said I didn't think it was the right kind of a speech to give, it might get us in trouble. I suggested that it be changed in some paces. After I made several suggestions I thought maybe it would be better if he should not make the speech as president of the Five and Over Club for fear anything he might say would be interpreted as reflecting the policies or sentiments of the O'Keefe and Merritt Company, so I told him just to throw it away, whatever I wanted to say to the boys I would say [1514] myself."

Is that substantially what occurred?

A. Yes. That refreshes my mind there.

Q. After having read that, is your mind also refreshed that Mr. O'Keefe did not crumple it up and throw it in the waste basket?

A. Yes, he did crumple it up.

Q. He did. Now, at another place in your testimony yesterday you were asked about the first time that you and Charlie went to see Mr. O'Keefe. Do

(Testimony of John Lovasco.)

you remember that occasion, in connection with the union matters, is what I mean. You testified about that yesterday, about two times.

A. Yes, that is right. There were two of them.

Q. The other time you went to see Mr. O'Keefe is the one I am questioning you about now. Is that clear in your mind?

A. Not right now. Just a minute. Yes, sir.

Q. Now, what was said, and were just the three of you there, you and Charlie and Mr. O'Keefe?

A. That is all I recall.

Q. All right, what was said there?

A. Charles Spallino went in to Mr. O'Keefe and asked Mr. O'Keefe what he thought the Five and Over Club should do to help win this election. I don't recall the exact words, but it was something that to this effect, that we should keep our nose clean.

Q. Anything else?

A. I can't remember at the present.

Mr. Garrett: Can I have that answer read, please?

(Answer read.)

Q. (By Mr. Nicoson): You already testified yesterday at page 1480 and also at page 1486 that at that time and place no mention was made of Mr. Collins' name. Is that still your testimony?

A. There was once, one time there that I recall that O'Keefe did say something about going up to see Collins. He did mention Collins' name. Now, I don't know whether it was the first or second



(Testimony of John Lovasco.)

speech, the first or second time we went to see Mr. O'Keefe. [1516]

Q. In respect to this occasion which we are now discussing, at page 1052 of the record, Mr. O'Keefe testified as follows:

“A. He asked”—when he says he, he is talking about Charlie Spallino—“He asked what he should do about encouraging or discouraging men from joining one or the other unions.” Did you hear him ask that, did you hear Charles ask that question of Mr. O'Keefe?

A. You say that Charles asked Mr. O'Keefe that?

Q. Yes.

A. Well, would you read that over again, please?

Q. “He asked what he would do about encouraging or discouraging men from joining one or the other unions.” This is Mr. O'Keefe talking, and when he said he, he was referring to Charles Spallino. Do you recall Charles making such a statement to Mr. O'Keefe?

A. To be truthful with you, I don't remember that.

Mr. Collins: You mean in those exact words, Mr. Nicoson.

Mr. Nicoson: No, the substance of it.

Mr. Collins: It doesn't sound like Charlie Spallino.

The Witness: That is right. Charlie doesn't speak like that.

Q. (By Mr. Nicoson): Do you remember

(Testimony of John Lovasco.)

Charles saying anything like that or anything to that effect?

A. What Mr. O'Keefe would do if any——

Q. What Charles said to Mr. O'Keefe. You two went into the [1517] office and Charles said something to Mr. O'Keefe? A. That is right.

Q. Is this what he said, or in substance is this what he said?

Mr. Collins: I object to that as having been asked and answered.

The Witness: I am sorry, I won't be able to give you a good answer on that.

Mr. Collins: I think it has been asked and answered on cross-examination.

Mr. Nicoson: We are trying to establish contact. He is trying to remember if anything like that was said.

Q. (By Mr. Nicoson): That is right, isn't it?

A. Beg pardon?

Q. You are trying to remember now if anything like that was said? A. That is right.

Q. Up to now you haven't said yes or no to it.

A. I said here that I didn't remember right at the moment.

Q. All right. Mr. O'Keefe also testified at page 1052 of the record, "I told him that I wouldn't give him any answer to that at all."

That is this same thing we are just talking about.

"Mr. Collins had done business with both AFL and CIO. That I knew he represented different firms"—— [1518]

A. I get you.

(Testimony of John Lovasco.)

Q. —“that had AFL contracts and CIO contracts, and he would be very familiar with the good and bad of either side, and for him to see him.”

Do you remember that?

A. I recall that now, when you said “both AFL and CIO”; that is right.

Q. That occurred; didn't it?

A. That is right.

Q. Substantially as Mr. O'Keefe has here related?

A. That is right. I recall those words now.

Mr. Nicoson: No further questions.

Q. (By Mr. Tyre): How often do you hold meetings of the Five and Over Club?

A. I believe—I am just going to make a guess at that because I am not a very good member of the Five and Over. I believe it is the second Thursday of the month.

Q. How long has that been the practice to hold meetings on the second Thursday of every month?

A. Well, I wouldn't say that—I know as long as I have been there there have been meetings at least once a month for the Five and Over. Now whether it was that day or not I don't know.

Q. So far as you can remember now it has always been Thursday, though? [1519]

Mr. Collins: Just a moment. I object to it as calling for a conclusion of this witness; calling for an answer this witness is not qualified to give. It is in evidence this man has been in the Service for four years.

(Testimony of John Lovasco.)

Q. (By Mr. Tyre): Since you have been back from the service, so far as you can remember, since that time until today, the meetings have been on Thursday at least once a month?

A. I wouldn't—I said I believe they are on Thursday. If you want the truth I have never attended any meetings.

Q. Never attended any Five and Over Club meetings?

A. I went in there one night here just a short while ago. No. That was American Legion.

Q. That wasn't a Five and Over Club meeting?

A. No, American Legion.

Q. When did you come back from the Service?

A. I got back to O'Keefe and Merritt Company April 23, 1945.

Q. And you attended no Five and Over Club meetings from that date until today?

A. Oh, yes.

Q. What meetings did you attend?

A. Not the Five and Over. In the Five and Over Club room for the American Legion.

Q. Have you ever attended any Five and Over Club meetings since you came back from the Service? A. One.

Mr. Collins: Objected to as having been asked and answered.

Q. (By Mr. Tyre): Is that the meeting on November 20th, the day of the election?

A. That is right.

Q. What was on this paper that you showed to Mr. Collins when you and Charlie went up there the day before the election?

(Testimony of John Lovasco.)

Mr. Collins: That is objected to as improper cross-examination.

Trial Examiner Kent: He may inquire.

The Witness: To the best of my recollection it was the speech I was going to make myself, telling the boys what I knew of the AFL and how long I was a member and that all other stove companies were with the AFL. And at that time there was—I believe I had added in there for the fellows not to be afraid, there wouldn't be—that the CIO wouldn't cut our steel off.

Q. You mean the CIO wouldn't cut the steel off in case the AFL won the election?

A. That is right.

Q. What else was on that paper?

A. That is about all I can remember, just talked about a minute and a half or two minutes.

Q. This is the paper you showed to Mr. Collins, is that [1521] what you are just testifying about?

Mr. Collins: Objected to as assuming a fact not in evidence. The witness testified I wouldn't even look at the paper.

The Witness: Yes, that is the paper that Collins refused to look at.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Tyre): When did you first see that paper?

Mr. Collins: Just a minute, Mr. Lovasco. When I make an objection, wait until the Trial Examiner rules before you answer it.

Mr. Tyre: Read that question back.

(The question was read.)

(Testimony of John Lovasco.)

Mr. Collins: That is objected to as calling for—I object to the form of the question as being ambiguous. Do you mean the paper or the writing on the paper?

Trial Examiner Kent: Reframe the question.

Mr. Tyre: I don't know how I could reframe it. I want to know when he first saw the paper. I will ask him about the writing later.

Trial Examiner Kent: I will reverse my ruling. You may answer.

The Witness: Well, the paper that I wrote on, that was the day before the election, that was the 19th.

Q. (By Mr. Tyre): Where did you get that paper? [1522]      A. Off of a desk.

Q. Off your desk?

A. I said off a desk. I don't have a desk.

Q. Off what desk did you take it?

A. I think it was one of the inspectors.

Q. You wrote it out yourself?      A. Yes.

Q. In longhand?      A. Yes.

Q. In pencil or pen?      A. Pencil.

Q. How many sheets was it?

A. Oh, I would say it was just a little over a sheet maybe, small sheet.

Q. Did you write this out on one sheet or two sheets?

A. No, I wrote it on one sheet, then I—this other part I put on the back of it.

Q. Did you show that to Charlie before you went over to Collins' office?

(Testimony of John Lovasco.)

A. Charlie was with me when I wrote it.

Q. Where were you when you wrote it?

A. This was over there by the inspection department below the deck.

Q. Was anyone else there when you wrote it?

A. Not that I recall. [1523]

Q. Just you and Charlie all by yourselves?

A. That is right.

Q. What time of day did you write it?

A. That must have been early in the morning. I would say about 9:30.

Q. What time did you go up and see Mr. Collins about that paper?

Mr. Collins: I object to it as immaterial, asking a man what time he went to do a thing six or seven months ago. It is the highest form of——

Trial Examiner Kent: Well, this is cross-examination. He may answer.

Mr. Collins: The most ridiculous thing I have ever heard of. He will ask him next what time he went to the bathroom.

Mr. Tyre: May I be excused just a minute? Apparently there is an urgent telephone call.

Trial Examiner Kent: Yes.

(Short recess.)

Trial Examiner Kent: The pending question was in substance what time did you go to Collins' office?

A. To be truthful with you, I don't know what time I went up there.

Q. (By Mr. Tyre): Was it in the afternoon or in the morning? [1524]

(Testimony of John Lovasco.)

A. I believe it was in the afternoon.

Q. Had you finished writing out this speech when you and Spallino broke up that morning?

A. What was that?

(Question read.)

A. Had I finished writing it up? Yes.

Q. (By Mr. Tyre): It was several hours later, you believe, that you and Charlie went up to see Mr. Collins about it?

Mr. Collins: Objected to as having been asked and answered. The witness has testified he don't know what time it was.

Mr. Tyre: I think the witness testified it was in the afternoon. Was I right on that, Mr. Lovasco?

The Witness: Yes, I testified it was in the afternoon.

Mr. Tyre: All right. I will withdraw the question.

Q. (By Mr. Tyre): Where was Charlie when you found him to take him up to Mr. Collins' office?

A. I don't remember.

Q. You went to him and told him that you wanted to go see Collins about this paper?

Mr. Collins: Objected to as irrelevant, incompetent and immaterial. I will stipulate he was in the factory some place.

Trial Examiner Kent: This is cross-examination, of course. The answer may be taken. [1525]

The Witness: What was the question again?

(Question read.)

A. Yes.



(Testimony of John Lovasco.)

Q. (By Mr. Tyre): What did he tell him?

A. The exact words I don't know.

Q. As best you can recall.

A. It was whether we was giving the boys a true story of what we was to speak about.

Q. No. I am talking about now what did you tell Charlie before you went up to Collins' office?

A. That is what I just told you.

Q. You wanted to know whether or not you were going to give the boys a true story?

A. Whether we had it written down right, that is it.

Q. Did you show Charlie this paper you had written out before you went to Collins' office?

Mr. Collins: Objected to as having been asked and answered.

Trial Examiner Kent: I think it has been pretty well covered. My recollection was he said he wrote it in front of Charlie.

The Witness: That is right, I did.

Q. (By Mr. Tyre): You did show it to Charlie before you went to Collins' office?

Mr. Collins: I object to that as having been asked and [1526] answered.

Mr. Tyre: I would like to know when he did show it, if he ever did.

Trial Examiner Kent: We will take the answer, to save time.

The Witness: Charles and I wrote the paper—I mean Charles was by my side when I wrote it. I don't recall whether I showed Charles the paper

(Testimony of John Lovasco.)

or not when we went up to Collins' office. There are a lot of things, too, I will say, like Charles Spalino stated here we didn't take down notes of everything that was done. We didn't know it was going to be complicated, if we did we would have been prepared.

Q. (By Mr. Tyre): With reference to this first meeting you attended in Mr. Collins' office, when Mr. Despol was present, when did Mr. Collins first tell you he already had the proposed CIO contract in his office?

A. Where did he tell me that?

Q. When.

A. The date I couldn't tell you. I asked him several times, "Has the contract come in? Has the contract come in?"

"No. No. No. No."

Q. Was it on the same day or was it a day before or two days before?

A. I couldn't truthfully answer you that one.

Q. You don't remember at all?

A. I don't remember when it come in.

Q. Did Mr. Collins tell you how many contracts he had? A. No, he didn't tell me.

Q. Did he give you a copy of the contract?

A. Not to me personally, no. But there was, I believe there was two other copies that was passed out among the committee there to look at. We kind of glanced over it. I was about the third stool over. I couldn't get to see much of it without breaking my neck; I didn't think it was worth it.

(Testimony of John Lovasco.)

Q. Were you there before or after Mr. Despol arrived?

A. I believe I was there before.

Q. How long had you been there before he arrived?

A. I don't know, but I went up there after the 4:30 whistle. I couldn't say how long Johnnie was on his way.

Q. More than 15 minutes?

A. I couldn't answer that, I wouldn't know.

Q. Who told you that this meeting was going to take place? A. Mr. Collins.

Q. When did he tell you?

A. Well, Mr. Collins and John Despol was out there with the sound truck and said something—the meeting with Collins. So then I knew it that way.

Q. Who said there was going to be a meeting with Mr. Collins? [1528] A. Mr. Despol.

Q. He told you that?

A. He not only told me, he told the employees over the microphone.

Q. What time did he say that meeting would be?

A. It would be at 4:30 in Collins' office.

Q. When did you get together this A. F. of L. committee?

A. When did I get them together?

Q. That is right.

A. I believe that same day, as I found out about the meeting in Collins' office.

(Testimony of John Lovasco.)

Q. What time was this announcement made over the loud speaker?

A. Well, their usual time out there is 12:00 o'clock.

Q. And that was the time that you heard it on the day the meeting took place?

A. I heard several times that he was going to go over the contract with Collins at 4:30. He stated that a number of times.

Q. You heard that several times?                      A. Yes.

Q. What other time when you heard it on the loud speaker system?

A. Oh, I couldn't say right offhand. He has been out there a number of times. The doggoned thing would break down [1529] once in awhile, the battery was haywire or something, but he did make that statement, that they was going to go over the contract with Collins.

Q. He made that statement at noon?

A. Yes, that is when he was there, at noon.

Q. You don't remember any other time that you heard the fact?

A. Yes, I heard another time, but I just can't recall the day that it was. But there was twice that I heard him.

Q. But that was for another meeting, though?

A. That is right, that is right, I believe it was twice. The doggoned outfit broke down there, the microphone, poor battery or something.

Q. Did Mr. Collins tell you to gather up any A. F. of L. committees to attend those negotiations?

(Testimony of John Lovasco.)

Mr. Collins: Objected to on the ground it is assuming a fact not in evidence. This witness has testified he came and asked permission to bring one up.

Trial Examiner Kent: The answer may be taken.

Mr. Collins: Object to it upon the further—

Trial Examiner Kent: The answer may be taken.

The Witness: Well, I asked him that. I wanted everything aboveboard. Then he says yes, he didn't have anything to hide, and he says, "Bring your committee up."

Q. (By Mr. Tyre): Did he say bring up your committee from [1530] the A. F. of L.?

A. He said, "Bring up your committee."

Q. You asked him if you could bring up an A. F. of L. committee though?

A. That is right. Members from the A. F. of L.

Q. Did he make this statement to you at any other time besides this first time?

A. No, not that I recall.

Q. Did you ask him if you could bring up a committee for the second meeting?

A. That was understood, at any of the meetings we would have there, there would be representatives.

Q. He stated that to you, you could have this committee at all the meetings?

A. Yes, that was the first agreement we made.

Q. Do you know that there were more than two meetings in Mr. Collins' office with Mr. Despol?

A. I think there were more than two meetings, yes. How many—

(Testimony of John Lovasco.)

Q. Do you know why you didn't have anybody present after the second meeting? A. Yes.

Q. Mr. Collins told you it would not be necessary to have a committee? A. No, sir. [1531]

Q. Who told you?

A. Beg pardon. What was that last question?  
(Question read.)

A. Nobody told me.

Q. (By Mr. Tyre): How did you know?

A. I could—I was there at the first meeting, and what representatives I had there on the second meeting, I learned what went on at the second meeting and I took it upon myself that Collins was not trying to hide anything from us, and I thought we didn't need any more committees up there, but I could have had this committee just the same if I had had my doubts. I did have of Johnnie, but not of Collins. Despol, rather.

Q. These men told you after the second meeting that it would not be necessary for you to have a committee up there any more?

A. They never told me any such thing.

Q. What did they tell you?

A. Just told me what took place at the meeting.

Q. And you then told them that they would not have to attend any more meetings?

A. I didn't tell them that.

Q. What did you tell them?

Mr. Collins: Just a moment. Objected to as calling for hearsay, no showing any representative of the [1532] respondent was present at any of

(Testimony of John Lovasco.)

these conversations. Objected to as improper cross-examination.

Trial Examiner Kent: He may answer.

A. I told you I didn't tell the boys anything.

Q. (By Mr. Tyre): You just heard their report and you made no remarks, is that it?

A. That was good enough for me.

Q. Is that what happened? You made no statement at all to what they told you?

A. That is correct.

Q. How long have you been working for the O'Keefe and Merritt Company?

A. I believe I stated at the opening when I got on the stand here it was April 22, 1936.

Q. And Mr. Lovasco, you have been present every day during this hearing, have you not?

A. Yes.

Q. And you have been seated next to Mr. Collins at the counsel table, is that correct?

Mr. Garrett: What has that got to do with it?

The Witness: Sometimes I have, sometimes I have not.

Q. (By Mr. Tyre): You have been sitting there next to Mr. W. J. O'Keefe, isn't that correct?

A. I have been sitting by Mr. Durant.

Mr. Garrett: Objected to as incompetent, irrelevant [1533] and immaterial.

Mr. Collins: I object to that upon the ground it is incompetent, irrelevant and immaterial. It is an attempt to intimidate this witness and it is highly prejudicial on the part of Mr. Tyre, who I have ob-

(Testimony of John Lovasco.)

jected on numerous occasions as having no right at all to appear in any of these proceedings. I wish to state for the sake of the record that Mr. Lovasco is not sitting here by me. He has been sitting around there by the A. F. of L. attorney just as much as he has been sitting by me.

Mr. Tyre: That certainly will not be substantiated by the record. I am merely asking this witness a question. I think he is capable of answering it.

Mr. Garrett: What is the relevancy of it?

Mr. Tyre: I think the Examiner knows what the relevancy is.

Mr. Garrett: I object on the ground it is irrelevant I suppose the Trial Examiner will rule.

Trial Examiner Kent: He may answer.

The Witness: If you are referring to have I heard everything that has gone on, no.

Mr. Tyre: That wasn't the question.

Trial Examiner Kent: Maybe it will save time to repeat it.

Mr. Tyre: Yes. [1534]

Q. (By Mr. Tyre): Mr. Lovasco, there are two rows of tables in this hearing room?      A. Yes.

Mr. Garrett: Same objection.

Trial Examiner Kent: He may answer.

The Witness: Yes, there is.

Q. (By Mr. Tyre): On one side is seated the Board and C.I.O. counsel and at the end of that table is seated Mr. Garrett, the A.F.L. counsel; is that right?      A. That is right.

Mr. Collins: Objected to as immaterial.



(Testimony of John Lovasco.)

Q. (By Mr. Tyre): On the other——

Mr. Garrett: Let the record show I have been sitting next to Mr. Tyre throughout this hearing.

Mr. Tyre: That is correct.

Mr. Garrett: I don't stipulate either one of us has enjoyed it.

Mr. Collins: I offer to stipulate Mr. Charles Spallino and Mr. John Despol and Jerry Conway have been seated next to Mr. Tyre at different times during this proceeding.

Mr. Tyre: That is correct; I represent them.

Q. (By Mr. Tyre): You, Mr. Lovasco, have been seated at the opposite table where Mr. Collins has generally been seated during this hearing; is that correct?      A. At times. [1535]

Q. At almost all times; is that correct?

A. At times, I said. I wasn't here at all of them.

Q. At all times you have been in this hearing room you have been seated at the opposite table from me?

A. That is right, on that side (indicating).

Mr. Tyre: That is all.

Mr. Collins: Any further questions?

Mr. Nicoson: I have no questions.

#### Redirect Examination

By Mr. Collins:

Q. Mr. Lovasco, this microphone you were talking about, was that something in the O'Keefe and

(Testimony of John Lovasco.)

Merritt factory, or was that on the C.I.O. sound truck?      A. That was on the C.I.O. sound truck.

Q. The C.I.O. have occasion to come out there at noons on various occasions and make different announcements?      A. Several times.

Q. I believe you testified on cross-examination a moment ago something to the effect that you and Mr. Spallino went into Mr. O'Keefe's office and Mr. Spallino asked Mr. O'Keefe what side the Five and Over Club should take concerning union activity, for election and so on, and I think you testified that Mr.—I think that the record that Mr. Nicoson read to you said something about Mr. O'Keefe said, "Go up and see Mr. Collins. He had dealings with both unions. Go talk to my lawyer, Collins"?

A. That is right.

Q. Something to that effect?      A. Yes.

Q. Do you recall that conversation?

A. I do.

Q. Was there anything else you can recall that O'Keefe said to you at that time?

A. Just to go up and see his attorney Collins, that Collins had been dealing with the C.I.O. and A.F.L. for a long time and that he could give us the story on it.

Q. Did Mr. O'Keefe tell you at that time that he wanted either one of the unions in there?

A. No, sir.

Q. Did he tell you the other way, he didn't want either one of them?      A. He didn't say that.

Q. When you came to see me, what did I tell you about unions?

(Testimony of John Lovasco.)

A. Well, you said that the company could not get mixed up with any of the unions, and that anybody could join whatever they wanted or do whatever they wanted.

Q. Did I say what would happen to anybody if they joined or didn't join a union? A. No.

Q. Did I indicate that any form of punishment would be [1537] handed out to anybody if they did or did not join a union?

Mr. Tyre: That is objected to as having been asked and answered.

Trial Examiner Kent: The answer may be taken.

Mr. Nicoson: Almost in identical words.

Trial Examiner Kent: How is that?

Mr. Nicoson: Almost in identical words.

Trial Examiner Kent: Read the question.

Mr. Collins: I will withdraw the question. That is all.

Mr. Nicoson: No further questions.

Trial Examiner Kent: Just what is your job in the plant, Mr. Lovasco? What do you do?

The Witness: I am expediter.

Trial Examiner Kent: Well, what is the nature of the duties of an expediter?

The Witness: Oh, I go out and buy things and try and rush production, that is, when we was in war, when we got back from the Service. And I was chief plant inspector at the time.

Trial Examiner Kent: There has been some testimony in the record about some office. What is that office?

(Testimony of John Lovasco.)

The Witness: I am glad you brought that up. Thanks. That is swell. I believe Charlie Spallino said something about a torture room. Am I wrong?

Mr. Nicoson: That is right. [1538]

The Witness: That so-called torture room—when I was with O’Keefe and Merritt, came back from the Service, why, I was made a chief plant inspector. At that time we had a number of Army and Navy and Air Corps inspectors. Every office downstairs and upstairs—I mean downstairs, was all taken. There was another room leading off on an upper deck there that used to belong to Tom O’Keefe.

I later had two more inspectors come in, and I didn’t have no place to put them. I took them up to this so-called torture room, and I showed them if they would accept that for an office temporarily—and I had a phone put in there for them.

So then they told me that they would have to have a file in there, and I got a file in there for them. They didn’t want to be responsible for the keys, so I had one key at all times, with their permission, and the other key was hidden where they could find it.

Mr. Collins: Did these inspectors work for you or were they employed by the government?

The Witness: They were employees of the government.

Mr. Collins: Were you at any time a foreman or supervisor?

The Witness: Chief plant inspector.

(Testimony of John Lovasco.)

Mr. Collins: Did you have any people working for you? I mean that you could hire or fire. [1539]

The Witness: Not at that time.

Mr. Collins: Have you at any time had any kind of a job around O'Keefe and Merritt where you could hire and fire anybody?

The Witness: I wish I did.

Mr. Collins: Answer the question.

The Witness: No.

Mr. Collins: Now, this job of expediting, what are you doing right now?

The Witness: Well, I am out expediting material, and I have also had a little sales of some machinery, dispose of some machinery.

Mr. Collins: This expediting job——

Mr. Tyre: Just a minute. May we have the witness answer the question before the next question is asked?

Mr. Collins: I thought he was through.

The Witness: That is all.

Trial Examiner Kent: Yes. I think it is in line with his duties in the plant.

Mr. Collins: I thought he was through. Go ahead, if you have anything else.

The Witness: No, that is all.

Mr. Collins: This expediting job you are talking about, does that mean you get to fly in an airplane to New York City or Chicago, or something, or does it mean you get in your car [1540] and go out and get bolts or something that is short about the job?

(Testimony of John Lovasco.)

Mr. Tyre: That is objected to as leading. It is an improper way to ask questions. Counsel knows that is not the proper way to ask questions. Ask him what his duties are. It is time we had just a little bit of propriety in these questions and answers.

Trial Examiner Kent: Let's reframe the question.

Mr. Collins: Is there a ruling?

Trial Examiner Kent: Yes. Reframe the question.

Mr. Collins: Describe your duties as an expeditor.

The Witness: Well, I go out and get material.

Mr. Collins: What kind of material?

The Witness: Anything they might ask for.

Mr. Collins: Do you get it personally?

The Witness: We have a purchasing agent up there and sometimes things are a little scarce and hard to find, and I will go out and try and locate it if I can.

Mr. Collins: That means you get in your car and go after it?

Mr. Tyre: Same objection, Mr. Examiner. The witness is trying to describe his duties and counsel is continually interrupting him. I think the witness is perfectly competent to answer.

The Witness:: Naturally I go out in my car. I don't [1541] think I would want to walk 75 or 100 miles a day at times.

Mr. Collins: Will you answer the question? Do

(Testimony of John Lovasco.)

you take any airplane trips out of town or is your work confined to Los Angeles?

The Witness: Right now it is all in Los Angeles.

Mr. Collins: That is all.

### Recross-Examination

By Mr. Nicoson:

Q. What were your duties as chief inspector, Johnnie?

A. Well, I had several precision inspectors under me that checked items as they came through on production lines. If there was anything that was rejected I would have to O.K. it and scrap it.

Q. Would you go around and see if the inspectors were doing their job properly?

A. Absolutely.

Q. If they weren't you would see they did?

A. Yes. In the plant and outside, because we had outside inspectors also, see.

Q. You would go out and check up on those inspectors?

A. Absolutely; that was my job.

Q. When did you change from the chief inspector over to the expeditor?

A. That was right—I would say about a month or a month and a half after the war had ended.

Q. About a month or a month and a half?

A. We had cleaned out the department and I had turned over all the precision tools to the tool crib.

Q. That was another war casualty, that job, and

(Testimony of John Lovasco.)

the work you were doing? Isn't that right? It went out with the war?

Mr. Nicoson: That is all.

Redirect Examination

By Mr. Collins:

Q. Mr. Lovasco, what was your job before the war started?

A. Well, I was out expediting before the war, also.

Q. Now, then, do we still have inspectors out there at the plant?      A. Yes.

Q. You are not the chief of any of them at the present time?      A. Not at the present time.

Q. On or about November 30, 1945, were you expediting then?      A. Yes, sir.

Mr. Collins: That is all.

Trial Examiner Kent: As expediter did you have any men working under you?

The Witness: Since I have been back from the war, no; work for myself.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Collins: Mr. Trial Examiner, I do not have any [1543] associate counsel. I deem it not professional conduct for an attorney to take the stand and testify in any proceeding for the reason it is against the rules of the American Bar Association, and as I understand it would then preclude me from arguing about my testimony or the effect of it, in compari-



son with anybody else's that might or might not conflict with it.

I believe there has been sufficient evidence as to what conversations took place between myself and Mr. Despol during working hours.

But I will offer to stipulate with the Board's counsel at this time, if I took the stand and testified, that I would testify substantially the same as the witnesses who attended the meetings in my offices, and that is, the witnesses Johnnie Lovasco and Doyle; and that as to what transpired at this Carl's Cocktail Bar, I would testify that that occurred after working hours at what I considered to be a social drink with a friend of mine, the same as I would some brother attorney in a trial after we are out of court.

And at that time I told him that if he would keep this thing down, just to a proceeding in the courts, keep it peaceful, keep it legal not have a lot of people having their heads beat in around about the plant, that I would see that my clients reimburse his union organization for their organizing expense he had mentioned in my office on prior occasions.

Mr. Nicoson: I am sorry that we can't stipulate.

Mr. Collins: Very well. The respondents rest.

Mr. Garrett: How shall we proceed hereafter, your Honor?

Trial Examiner Kent: What is that?

Mr. Garrett: What will be the order of proof hereafter? Who will you call upon next?

Trial Examiner Kent: Well, I think that any of the A. F. of L. counsel might proceed to put on some testimony.

Mr. Garrett: Come now the unions, parties to the contract, represented by me here, the Stove Mounters, the Carpenters, and the Moulders, and at this time move this Board as follows:

To dismiss this action insofar as it may affect the interests of any of these moving parties. These moving parties in this action, of course, are here to defend their contract which is here in evidence, which they allege has been entered into in good faith by the parties on both sides, from the effect of the complaint filed by this region of the National Labor Relations Board, which complaint we hold requires to be proved in all particulars by the Board by competent evidence, not only insofar as it may affect the interests of respondents and provide remedies against respondents, but also insofar as it may affect the interests of these moving parties and affect the attitude of this Board [1545] toward the validity of the contract.

We base our motion to dismiss, and naturally we are making this motion only for ourselves, for our own benefit, for our own contract, and we address it to matters affecting the respondents only insofar as those matters may affect the validity of our contract.

We make our motion to dismiss first upon the ground that this Board has no authority or jurisdiction to interfere with or in any way impair the obligations of our contract. We are familiar with cases in which orders of the Board have affected the enforcement and validity of contracts held to have been entered into between respondents in C cases

and unions found to be company dominated unions, and we would call the Board's attention to the fact that there is no evidence in the recording showing that any of these A. F. of L. Unions are company controlled or company dominated unions. Rather, I may say the evidence is all to the contrary. Both by stipulation and the effect of the evidence they are shown to be legitimate and bona fide organizations, independent in their actions and activities of any control or domination by any employer, and I think the Board will take notice in the sense of judicial notice that all of these A. F. of L. organizations are independent bona fide workers' organizations which have been in existence for a long time, each of them for much longer than this Board has been in existence, and throughout the life of this Board have been recognized as legitimate bona fide labor organizations.

The specific evidence in this case will further show that the Stove Mounters organization, in particular, is the only independent labor organization which ever tried to organize the workers of the respondent O'Keefe and Merritt for their benefit in the entire period from the formation of this Board up to and including at least the second week of the war, when we find some evidence of CIO evidencing some interest in the organization of the O'Keefe and Merritt employees.

The record of this proceeding shows that the A. F. of L. Union here, which has the largest share in this contract we are trying to defend, is the same Stove Mounters Union which has been working on

the organization of the O'Keefe and Merritt plant since 1936 or 1937, fighting the company there through all that time, filing charges here with this Board throughout that time in an attempt to prevent discrimination and discriminatory discharges and to protect their work of organization. All the evidence here in this case provides a clear inference that at least as to the Stove Mounters Union in the situation it is in with respect to the O'Keefe and Merritt operation, that the CIO is a mere interloper which attempted to hide behind the cloak of the war emergency to take advantage of the suspension of the strike and the boycott activities of the A. F. of L. during the war in an attempt to come into the plant and steal for itself the benefit of the organizing work which had been done by the American Federation of Labor Unions.

We urged that in the absence of any evidence that the labor unions, parties to this A. F. of L.-company contract are company controlled or dominated, this Board is without jurisdiction to strike down the contract, without jurisdiction to interfere with the performance by either party to that contract of its obligations under the agreement, and particularly without jurisdiction by attempting to excuse the company from complying or by directing the company not to comply, without jurisdiction to put these A. F. of L. Unions in a position where they themselves will be bound by the obligations of this agreement but prevented by this Board from requiring reciprocal performance by the company party to the agreement.

In that connection, I want to recall the Board's attention to the facts and the contract provisions which are pertinent. The difficulties imposed on A. F. of L. Unions so frequently in many cases, of which this is one, by the Board at various times and following various theories in enforcement of the Wagner Act stem probably from the ambiguity of certain portions of the Act itself, which may have resulted more from inadvertence than from design.

In the question of the determination of the appropriate unit and the appraisal of the union's interest in terms of that unit found to be appropriate, this Board has frequently followed policies which seem to penalize craft unions unfairly and to favor unions employing the so-called industrial form of organization also unfairly. It is quite apparent that unions having craft jurisdiction extending horizontally throughout an industry and beyond the particular employer in question and beyond his own industry into other industries, have a legitimate interest in the activities of an employer not exclusively dependent upon their membership or representation on the particular employer's particular payroll.

In this case we have a situation where unquestionably the ability of the A. F. of L. Unions to make a contract and their right to have a contract with this employer depends not exclusively upon their representation in his own plant, but upon the fact that the membership of these A.F.of L. Unions extends beyond this employer's plant into the construc-

tion and other industries where the employer must place his products and where they will not be placed unless the particular crafts in the construction industry, the A. F. of L. crafts in construction industry, have assurance that the members of their crafts employed in the employer's [1549] plant and the members of other unions affiliated with the American Federation of Labor have recognition in the employer's factory to the exclusion of the CIO members and members of no union at all.

In other words, our rights to have this contract with the Pioneer Electric Company rest, in our opinion, as much upon our membership and membership of these A. F. of L. and other A. F. of L. Unions in the construction trades which are required to handle the employer's material, as they do upon the membership of these and other A. F. of L. Unions in the employer's plant itself. That principle has always been the governing law of this state, and was reasserted in the so-called Smith and McKay series of cases finally decided in our Supreme Court in 1940, in which it was specifically held that the general interest of a union in an industry was sufficient to legalize and make just and proper their demands that an employer exercise and execute a closed shop agreement with them even in a case such as the Smith and McKay case where the union itself did not actually have any representation within the plant of the employer from whom the closed shop contract was demanded, and in the course of which demands the A. F. of L. Union was picketing the employer's premises.

I need only say that a strict application of the principle that the validity of a labor contract entered into [1550] between an employer and a labor union was subject to proof that at the time of the execution of the contract the labor union represented a majority of the employer's employees.

I need only say that strict application of that rule would result in the obvious practical effect that in certain industries there could be no valid labor contract and that in certain industries there could be no activities by any employer requiring labor in the course of their operations. I refer specifically to the construction business, in which it is absolutely necessary for construction contractors who contemplate the doing of construction work, before they have any employees to work on the job, before they even make a bid in order to secure the job, to secure a labor contract from the appropriate American Federation of Labor Unions in order to be able to bid to see whether they have a job or not, because in order to do that they would have to know that they are going to have a secure and assured labor supply and secure and assured labor relations, at the risk that failing to do that the contracts may not thereafter be consummated and their bonds be forfeited.

Mr. Collins: Mr. Garrett, will you excuse me a moment? Much as I hate to interrupt your dissertation and much as I enjoy it, as we have often said before, the witching hour of recess has now arrived.

Mr. Garrett: I wonder if I could just finish that

point. [1551] It will take me just a second, and I will conclude my first point.

Trial Examiner Kent: Yes, you may.

Mr. Garrett: I say, therefore, that I believe there exists room side by side with existing policies of this Board for the application of the general principles of contracts to the extent that where, as in the construction industry, the exigencies and the necessities for the procedure are quite apparent, I believe there exists room for the principle that where contracts are executed by independent uncontrolled labor unions and employers in good faith on each side, that those contracts are entitled to receive from this Board the respect to which the provisions of these contracts are entitled under specific provisions of the United States Constitution, and that the Board should not interfere with the execution of such contracts.

I further desire to call your attention, in closing on this point, that if it were not for the fact that the Board gives general credence to contracts executed in good faith between independent and uncontrolled parties on each side, labor organizations on one hand, and employers on the other, if it were not that that principle is being followed, we would have a state of turmoil in the construction industry of this country under which it would be impossible for any contractor to bid or begin operations. I call attention of [1552] the Board to the analogy of the situation in these particular cases where we have an employer affected by the conditions of the construction industry, subject in the past and in the fore-



seeable future to an A. F. of L. boycott throughout the retail trades, throughout the construction industry, and where we have an employer beginning to engage in business needing immediately access to a vastly increased labor supply and needing to secure that supply of labor from the membership of the American Federation of Labor Unions for two reasons; first, because that available labor supply in and by itself is in the membership of the American Federation of Labor Unions, and, second, because only by securing much of that labor supply from American Federation of Labor Unions can the employer continue to make his product available for sale and installation through the A. F. of L. organizations of the building trades.

That is all I have to say on the point of jurisdiction.

Trial Examiner Kent: Well, I understand you wish to continue with your motion following the noon recess.

Mr. Garrett: I would.

Trial Examiner Kent: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:10 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [1553]

#### After Recess

(The hearing was reconvened at 2:19 o'clock p.m.)

Trial Examiner Kent: You might proceed.

Mr. Garrett: My second ground is that the AFL Unions had a right to contract with Pioneer Elec-

tric, irrespective of anything that may have been done by O'Keefe and Merritt.

The evidence is that Pioneer Electric was not a new entity formed out of the old one of O'Keefe and Merritt, but that the two at all times since 1942 have been separate, more or less distinct, and coexisting entities. The significant thing about this coexistence as separate entities during the period of more than three years preceding the National Labor Relations Board election in the O'Keefe and Merritt Company is the fact that all the parties here had notice thereof. When I say all the parties here, I refer not only to the respondents, the O'Keefe and Merritt Corporation and the Pioneer Electric Company partnership, but also to the AFL Unions, the CIO Union and the National Labor Relations Board, itself, which, in this case, is acting at the instance of and more or less for and on behalf of the CIO Union.

I make that statement because the situation is not one in which the Board intervenes in order to secure to the employees of the company responsible and responsive [1554] representation through a labor union. That has already occurred in this case.

The employees of the Pioneer Electric Company obviously have responsible and competent representation in their relations with their employer through the A. F. of L. Unions under whose employment contract they are working.

The Board is in this particular case obviously, because it is the feeling of the Regional office of the Board that in place of the present responsible

and independent and uncontrolled AFL union representatives there should be substituted a CIO representative in its place and stead, which I presume the Board feels will be similarly responsible, responsive and uncontrolled by the employer.

It isn't in this case, so far as the Regional office of the Board is concerned, the question of getting that kind of representation for the employees of Pioneer Electric Company. It is a question of substituting, if possible and if their aims are achieved, the CIO for the AFL.

Now, the Pioneer Electric Company in the period I have mentioned, that is, the period roughly beginning with the start of the war, was, as is shown by the evidence in this case, openly notoriously operating the machinery, the lease, payroll, employees contracts, products. And this fact was as open and notorious to the CIO and the National Labor Relations Board as it was to the American Federation of Labor. [1555]

It ought to be axiomatic, it seems to me, that in dealing with the National Labor Relations Board, petitioners for representation ought to deal in good faith. The petitioner who wants the employees of A and B to be incorporated in what he represents to be an appropriate unit, should not be allowed to come here and say, "I want the employees of A Corporation plus the employees of B Co-Partnership, but I am only going to put down in my petition that I want the employees of A Corporation, so that then the employees of the B Partnership will not be able to vote and effect determination of their

representative, but after I have filed a petition for representation of A Corporation I will then escape the necessity of allowing the employees of B Co-Partnership to vote, by coming back to the Board on a charge case and saying, 'Why, I meant A plus B employees all the time, although I forgot to put down the B, and I want you to fix me up on a charge case for what I didn't fix up for myself in a representation case.'"

Now, that is exactly what has been done here. A kind of an estoppel, it seems to me, ought to be declared against the activities of the CIO organization which came here on an R petition knowing that there were two separate entities which might be affected, chose one and ignored the one, through intention or oversight, and now attempts *ex post facto* to have an adjudication made as to representation of an [1556] employer whom the petitioner did not include in his choice of bargaining unit but which the petitioner sedulously and purposefully excluded.

Now, Mr. Despol and the CIO come to the Board now and say in effect, "I want to eat my cake and have it too. I want to exclude the Pioneer employees for an election and get them here in a left-handed behind-the-back method, and that is exactly what this charge is brought here for. That is the purpose of the charge. The filing of this charge is one step in the scheme and plan which the CIO instituted with the filing of the original R petition on which an election took place in November, 1945. This is the second bite they are taking in the apple,

and I say that the Board should say that if they did not have either the courage or the inclination to seek to obtain representation in the first place by declaring the unit which they really wanted, then in that event they should be precluded from obtaining representation by this kind of a plan, which is a double-barrel scatter gun plan if I ever saw one. They should be precluded from obtaining representation over people whom they never declared their intention to represent and upon which representation they did not permit those people to vote.

It has already been pointed out that the partnership and corporation were not only actually separate through having different ownership—I think that officers and [1557] stockholders of the corporation have been shown to have a 30 per cent interest or less in the partnership—but they were dealing with each other at arms' length in the matter of leases and contracts. But the important thing has been, that separation has been open and notorious since the beginning of the war. It has been open and notorious to every employee of either corporation, A. F. of L. or CIO, since the beginning of the war. The employee of O'Keefe and Merritt who got hurt made his claim against O'Keefe and Merritt as a self-insurer in Workmen's Compensation matters. The employee of Pioneer Electric who got hurt made his claim against a private insurance company under a separate policy of insurance for Workmen's Compensation purposes. The employee of O'Keefe and Merritt had his Social Security and withholding tax deductions made by O'Keefe

and Merritt. The employee of the Pioneer Electric had his Social Security and withholding tax deductions made by Pioneer Electric. In unemployment matters, the employee of O'Keefe and Merritt drew his unemployment insurance from a separate fund set up in the account of O'Keefe and Merritt Company. In unemployment insurance matters an employee of Pioneer Electric drew his unemployment benefits from a different and separate unemployment insurance benefit account set up in the name of the Pioneer Electric. [1558]

The employee of O'Keefe and Merritt week by week got his pay by way of a check, which was signed O'Keefe and Merritt Company, a corporation. The employee of Pioneer Electric got his check week by week signed by Pioneer Electric Company, a co-partnership.

For a great period of time involved the employees worked on separate sides of a physical partition, which was maintained in the common property owned by one of the entities and held by the other under a leasehold interest.

The actual radiant of employment between the two concerns varied. At times the one concern had the greater number of employees. At times the other concern had the greater number of employees. The situation at the present time in Pioneer Electric has been that it has a much greater number of employees than O'Keefe and Merritt, which is not the situation which has obtained at all times. In past years and since the beginning of the war, on various occasions, that position has been reversed

and O'Keefe and Merritt have had a larger number of employees. Then Pioneer Electric has had a larger number of employees. Then O'Keefe and Merritt has had a larger number of employees. Then Pioneer Electric has had a larger number of employees.

What labor organization, trying fairly to determine the representation of both groups of employees, can be allowed to pick any particular time and direct representation [1559] petition that one or the other of these two concerns can claim thereby he has found both of them?

Now, it seems to me that in effecting a contract with an employer, entering into it with good faith, because he represents the overwhelming majority of his employees, no labor union should be put to the impossible task of solving a legal conundrum involving factors of the employer's past, his future, the way he came to have his business, the way he came to have his equipment, the way he came to be occupying the premises he has, the way he came to have the contracts that he has, the way he came to be carrying his compensation insurance in the way he has, the way his unemployment accounts are handled in the way they are, the way his accounting matters are handled in the way they are.

It ought to be enough for any labor union which represents the employees of a given employer to be able to see that that employer is operating apparently as an entity; that he is paying all his employees with the same kind of pay check; he is covering them all with the same kind of compensation insurance;

That he has them all in the same Social Security pool; that he makes leases just as if he were an independent contracting entity; that he makes contracts as if he were a free and independent contracting entity; that the majority of his ownership is in the hands of persons who are independent of interest in any other person, firm or corporation; that a rival union has treated him as being separate from any other person, firm or corporation; shouldn't that be enough?

How far is this Board going in attempting to impair the obligations of contracts which the courts of this state have been adjudicating since we have had a legal system here, and adjudicating rather satisfactorily, on the whole, to all the parties to those adjudications? How far is the Board going to go in laying aside or trying to interfere with our formal rules of the parties and the freedom of parties to contract and be bound by the benefits of obligations of contracts? How far is it going along the line the prosecution here apparently is demanding it go in putting elements in the execution of contracts to make it absolutely impossible for anybody to determine whether he has a contract or not? [1561]

Now, the A.F.L. unions have a contract with the Pioneer Electric Company. They expect to live up to that contract. They have a contract with the Pioneer Electric Company that the courts of this state are going to make them live up to, no matter what the National Labor Relations Board says about it.



The Pioneer Electric Company has a contract with the A.F.L. unions that we expect to ask the Pioneer Electric Company to live up to, and we expect if they don't live up to that contract, either as a result of their own free will or of forces of influences that come out of this case, we expect to ask the courts of this state to have them live up to them.

They have a contract that cost us something to get. They have a contract that cost us seven continuous years of hard work, boycotting the industry, broken heads and broken hearts, if you like, effort and so forth to get, money to get.

We never asked the company to give us back any of that money, either. We never asked to pay them, we never asked them to pay us anything, except the legitimate fruits of our efforts, not money into our hands. But their signatures on a contract which both parties to that contract would respect and both parties to that contract have a right to ask that the National Labor Relations Board permit them to respect [1562] their obligations thereunder.

Summing up my second ground there, I would say that, to summarize it, the Board ought to take cognizance of the fact that the party in whose behalf it is acting, the C.I.O.—and I say that with all respect to the Regional Board here, because I know the rules by which they are guided—I say it is obvious, as I said before, they are acting in behalf of one group of labor organization, the C.I.O. group, who are interested parties on the labor side of this

case. They are acting in behalf of that organization and not on behalf of the United States or the employees, if you please, because it can't be said that any greater benefits will result to the employees or the peace and dignity of the United States or the enforcement of the Act through the representation of the employees by the C.I.O. than would result from the present representation by the A.F.L. Both labor groups are independent, not company dominated unions.

From each of those labor groups the employees of the company may expect and receive bona fide representation. So, as I say, the Board is here on behalf of an interested party, trying to adjust a dispute. Not between the rights of the employees and the company; not an adjustment of the interests of the employees to what is due them under the law; but a substitution of the C.I.O. for A.F.L. representation.

I say that therefore the Board, the Regional Board, [1563] acting for and on behalf in this case purely of an interested labor organization, for the purpose of substituting it for another which occupies the same status before the law, as a bona fide labor organization, the Regional Board is representing a client or a charging party here which is estopped. The Regional Board ought to be considered as being estopped to violate the obligations of the existing A.F.L. contract. That estoppel rests upon the facts clearly apparent from this record, that the party represented here by the Regional Board, the C.I.O., had full notice at all times of the

separate, independent existence of the Pioneer Electric Company, separate and apart from the O'Keefe and Merritt Corporation;

That having that knowledge it chose to create an issue based upon representation of the O'Keefe and Merritt Corporation only; that having that knowledge it chose to and did exclude the Pioneer Electric Company and its employees from that question of representation;

That all other parties having the same knowledge as the C.I.O. relied upon the representations so made by the C.I.O. as to its intention and acted thereon;

And as a result of the representations made by the C.I.O., with full knowledge of the facts that as a result of the actions taken by the C.I.O., with full knowledge of the surrounding facts, the other parties involved, that is, the [1564] A.F.L. unions, relied on those representations as being determinative of the C.I.O. intentions, and were moved and influenced thereby.

They acquiesced therein to the extent of the exclusion of the Pioneer Electric Company from the representation question. And having been thus the recipient of representations, having relied on those representations in good faith, having moved and acted thereon, all such representations having been made by the C.I.O. and acquiesced in by the Regional Board, the A.F.L. unions, Pioneer Electric Company, their contracting party, cannot be now placed in a position where, to their detriment, they will find adjudicated a question which we deliber-

ately excluded from adjudication by action and representation and reliance of all the parties upon which the Pioneer Electric Company and the A.F.L. unions relied.

If you ever saw a clear case of estoppel, this is it. The C.I.O., the Regional Board, are clearly estopped on the basis of all the facts in this case from asserting that the representation rights of the Pioneer Electric Company were ever adjudicated, were ever precluded, or that the rights of the A.F.L. unions with respect to the Pioneer Electric Company were ever determined in any manner by an action of the Board, by any action of the C.I.O., by any election or anything else. [1565]

Now where does that bring us?

Now, third, if the Pioneer Electric Company stands in that position with that separate entity, as far as I can see, the A.F. of L. unions have a right to do everything they might properly do to secure the right to represent the employees of the Pioneer Electric Company. They had a right to continue as they did to attempt also to secure the right to represent the employees of the O'Keefe and Merritt Company, election or no election, and the A. F. of L. unions are going to continue to attempt to secure the right to represent the employees of the O'Keefe and Merritt Company, and the A. F. of L. Unions are going to do that only by attempting to get the employees of the O'Keefe and Merritt Company, of which there are now and will be in the future a substantial number, to voluntarily consent to be represented by the A. F. of L. unions, but the A. F. of L.

unions will also continue with respect to the O'Keefe and Merritt Company to exercise every form of legal coercion they can possibly exercise, both upon that company and its employees, through maintenance of an unfair list and boycott upon the company's products, to bring about a situation where on the one hand the company will be required to bargain and contract with the A. F. of L. unions and on the other hand the employees of the O'Keefe and Merritt Company will be compelled to join with the other working people interested in the sale and setting of their [1566] product, in membership in the A. F. of L. unions.

Now, it is quite apparent, as I say, that the efforts of the American Federation of Labor continued, and in my opinion they continued legitimately, toward the organization of the O'Keefe and Merritt Company after the election just as they continued continuously from the year 1936 up to and including the time of the election, short of the time when the A. F. of L. unions were respecting their obligations imposed by the war time emergency.

Now, as a result of that situation, as far as the record in this case goes, at the present time the C.I.O. is negotiating for, has negotiated for and probably will continue to negotiate for a contract with the O'Keefe and Merritt Company. The A. F. of L. unions have not since the time of the election negotiated for such an agreement. The C.I.O. complains that it has had some difficulty with the company in effecting the agreement they want with the

O'Keefe & Merritt Company. As to what difficulties they have or how great or how little they are, the A. F. of L. unions have no concern. Whether the A. F. of L. unions get a contract with the O'Keefe and Merritt Company or not, the O'Keefe and Merritt Company is going to stay on the A. F. of L. unfair list until it come into contractual relations with the American Federation of Labor. But with respect to those difficulties the A. F. of L. has no concern and neither does the A. F. of L. have anything to do with their making. What happens between the O'Keefe and Merritt Company and the C.I.O. has in our view of the situation nothing to do with the issues in this case, as far as they affect us. Insofar as the issues in this case affect us, we stand here upon this state of facts: Our organization among the employees of both companies continued up to the time of a consummation of a contract on January 31, 1946. At the time of the consummation of that agreement the A. F. of L. unions had given the company, that is, the Pioneer Electric Company, satisfactory evidence of majority representation in the employees of the Pioneer Electric Company and those who were about to become their employees. The evidence shows, and this is not for us to prove, in our view of the situation, we are not here under the obligation of defending a contract which is good upon its face, made concerning a legal subject matter between parties competent to contract and make the contract in all of its terms; we are here with that contract, and if it is void, it is up to the Board to show wherein. But the evidence in

this case, brought out by the Board itself, although it is not affirmatively necessary for us to show that we had capacity to contract, the evidence in this case brought out by the Board itself shows that the A. F. of L. union did all that is necessary for any labor organization under the rules of the Board itself to make a contract with an employer. The representatives [1568] of the various A. F. of L. labor organizations went in to the offices of the company, at the meeting which Mr. Durant attended in Mr. Collins' office, and they were there claiming majority representation. They had their membership records there. They said in effect, "All your employees are ours, we represent them all, all those people you are going to transfer are ours, they are our members, here are the records, look them over. Mr. Durant referred them to Mr. Collins and Mr. Collins presumably looked them over, and Mr. Collins advised Durant in the presence of all the parties that he was satisfied that the representation claims of the A. F. of L. representatives were true and correct. Upon that basis the parties contract.

Now, that brings me to my last point, 4, unfair labor practices. There are two kinds of unfair labor practices at issue here. The complaint is very carefully and artificially drawn so as to confuse the actions of the Pioneer Electric and the actions of the O'Keefe and Merritt Company, but the fact of the matter remains that all bargaining taking place in the period covered by the complaint falls into two classes: Bargaining by the O'Keefe and Merritt Company with the C.I.O., which has not resulted in

a contract, and bargaining by the Pioneer Electric Company with the A. F. of L., which has resulted in a contract. With the difficulties that the C.I.O. has had in bargaining since the [1569] Pioneer election with O'Keefe and Merritt, as I say, the A.F.L. unions have no immediate concern, nor have they any immediate agencies in those difficulties. The outcome of that bargaining, of course, is a different matter, but it has had no outcome at the present time, and whether that bargaining ever would or could affect the status of the O'Keefe and Merritt Company on the A. F. of L. unfair list is a question about which I have very definite ideas, but it does not enter into the question to be solved here.

The fact, therefore, is that this case splits into two independent parts, with one of which the A. F. of L. is not concerned on this record. As to what has happened in the case of the C.I.O. bargaining with O'Keefe and Merritt, that is a matter which we have no concern in and with which we will have no concern, either now or in the future, and which should be excluded from the consideration of the Board of the allegations in this case. If the C.I.O. has failed to make a contract with O'Keefe and Merritt, well and good. If the C.I.O. has made a contract with O'Keefe and Merritt, that also has no bearing on the question of the A. F. of L. contract with Pioneer Electric. If certain financial misunderstandings occurred between the C.I.O. and the O'Keefe and Merritt Company which were the outgrowth of their bargaining concerning a contract, that likewise is a matter which is not binding upon



the American Federation of Labor, [1570] of no concern to the American Federation of Labor, of no concern to the American Federation of Labor, and I might say of very little concern to the Board. The things that concern us are the question of whether or not we should be precluded from making a contract with Pioneer Electric Company when we were on the face of the record not a company controlled or dominated union, by an adjudication through a consent election, if that is an adjudication, made with respect to the O'Keefe and Merritt Company. I have already considered that, so that brings me to the last point, and that is this: Are we precluded from making a contract with the Pioneer Electric Company by alleged unfair labor practices committed by the O'Keefe and Merritt Company, as alleged in this record, allegedly against the C.I.O. organization, the same C.I.O. organization which filed a petition excluding the Pioneer Electric Company but including the O'Keefe and Merritt Company, all of which things, as you recall, occurred prior to the determination involved in that election.

Now, it seems to me that the effect of any unfair labor practices of the O'Keefe and Merritt Company against the C.I.O., if there were any, which I do not concede the record shows, it seems to me that the effect of any such unfair labor practices, if any occurred, should not be carried over beyond the period of an election which apparently determined the question of whether or not those unfair labor practices [1571] had or had not been effective and from there on carried over into another con-

tract with another business, made by another union, at a point in time much later than that involved at O'Keefe and Merritt.

Now, it seems to me that the effect of an unfair labor practice has got to stop somewhere. If unfair labor practices of O'Keefe and Merritt Company were involved, as pertaining to the only issue that the C.I.O. had or had any right to have, the issue outlined in their representation petition, the issue of who is going to represent the O'Keefe and Merritt employees, that those unfair labor practices could not carry beyond the election at O'Keefe and Merritt, because the election terminated in favor of the C.I.O. organization. After that if you have got anything you have the refusal to bargain with the C.I.O. on the part of O'Keefe and Merritt, a matter in which as I have stated the American Federation of Labor has no direct interest.

Now, to recall the Board's attention to the difference in the evidence as to the alleged unfair labor practices as opposed to the refusal to bargain which affects only the C.I.O., look at the record and see what are the alleged unfair labor practices alleged before the election are and what the unfair labor practices alleged are after the election.

You will find from the record that all the unfair labor practices alleged, all the unfair labor practices involving [1572] the company alleged, occurred before the election.

We come to the period following the election and what do you have? You have the entirely unsupported statement of Charles Spallino that Lovasco

continued to work with a committee on behalf of the A.F.L. in the plant after the election. Just what sort of an unfair labor practice is that on the part of the A.F.L.? None whatever. What sort of an unfair labor practice does that constitute on the part of the employer? None whatever, on the evidence in the case, unless this Trial Examiner is able to adduce from evidence not here presented that in some mysterious way Mr. Lovasco was the company.

Certainly, if Mr. Lovasco was the company he would certainly be far less the company than a member of the American Federation of Labor, whose connection in that respect dates back to the year 1936 or the year 1937. What would be more natural for him, in view of the unsuccessful outcome of the election, than to continue to work for the side that apparently, by his previous actions, he proved he thought were right? Did he have to leave the C.I.O. in control of that situation forever? Obviously he thought not, and I think the law does not require that he should make any such omission.

Now, there is an entire absence of evidence of unfair labor practices, as far as I can see, which would cast any [1573] cloud on or impinge the validity of the American Federation of Labor contract. The parties to that contract were competent to make it. They were competent to contract with each other. They were competent to contract with other people.

I will say again, at the risk of very great repetition, that there isn't a scintilla of evidence in this case, nor can anyone in this hearing stand up and

sincerely say that there is the slightest degree of company domination or control on the part of either of these companies involved, reaching into or involving any of the American Federation of Labor unions involved.

So, as I say, they are parties competent to contract. They are parties that have gone through the procedures which are usual and proper to these cases.

Mr. Collins: Mr. Trial Examiner, I was under the impression we would be through here in about 30 minutes when we reconvened. The hour is 3:15. I made an appointment to appear in one of the courts of this county. I will have to excuse myself.

I don't believe there is going to be any matters that will be raised material to my clients not already gone into. I would like to, at this time, however, renew my motion to dismiss on behalf of both the Pioneer Electric and O'Keefe and Merritt, which you granted the permission to resubmit at the close of the case. [1574]

I would like to renew all my motions to strike various portions of testimony that were not connected, pursuant to your permission granted at that time to renew the motion at the close of the hearing.

I would also like to move at this time, in view of the length of the record, which, I believe, will be over 2,000 pages, I would like to have a reasonable time—and that would be more than the 7-day period allotted—in which to file my brief, a written brief in this matter.

I think it would be and would take at least a month to go into this matter and cite the authorities and review the evidence and write a brief.

Trial Examiner Kent: I might state it is the general purpose of the Board to attempt to get out intermediate reports within 30 days of the close of the hearing.

In view of that, I might state I am reasonably certain I won't be ready with my report within 20 days, to get it in final form. If you would get the brief in by 20 days, I certainly will consider it and be glad to.

Mr. Collins: Very well.

Trial Examiner Kent: I wondered if the parties wanted to engage in general oral argument, other than this. Yours has been in the nature of argument, Mr. Garrett.

Mr. Schullman: I have a short motion.

Mr. Nicoson: I am willing to waive argument on the [1575] merits, if the other parties will.

Trial Examiner Kent: Before you go there is one question, Mr. Collins, I wanted to ask of Mr. Tyre and Mr. Nicoson. How about the Teamsters?

Now, the Teamsters seem to be employees of this, according to the uncontradicted testimony of Mr. O'Keefe, Jr., as I remember it, of this Service Incorporated. Now, Service Incorporated, not having been named in the representation petition, I wonder if the company or—

Mr. Nicoson: Nor represented here in any capacity.

Trial Examiner Kent: How is that?

Mr. Nicoson: Nor represented here in any capacity.

Trial Examiner Kent: I wonder if the company thinks, for my own information, if they could be certified under the petition as filed. If the C.I.O. could be certified under the petitions filed for those teamsters. There is another classification of men, service men who were not primarily teamsters. They do operate pick-up trucks and go out on repair jobs.

Now, I don't know what the payroll would show. I haven't examined it in detail. But I wonder if they wouldn't appear on the payroll as service men rather than teamsters or truck drivers. But that seems to me to be a serious question. I would like counsel to consider that.

Mr. Nicoson: I don't think there is anything serious [1576] about it. The complaint alleges they are in and we have evidence to show they are in, and we stand on the complaint, we stand on the evidence.

Trial Examiner Kent: Very well. I will have to assume the burden.

Mr. Collins: I take it there will be no oral argument, and we will have 20 days from the close of this hearing to get in the written brief?

Trial Examiner Kent: Yes. In view of the length of the proceeding I think it is a fair request, and I will grant that.

Mr. Collins: Thank you.

Mr. Garrett: Now, obviously, if an effective contract, made between parties competent to contract, such as the A.F.L. contract in this case is, if an

attempt is made to either strike it down or impair its enforcement here, it must be on one or two theories.

One theory is that the union, otherwise competent to contract and enforce its contract, fails to meet a requirement of the Wagner Act with respect to its representations of the employees of the contracting employer.

On that point I have already referred to the evidence produced in the Board's own case, which would seem, at least to my mind, to indicate that in the ascertainment of the representation of the A.F.L. union the parties went through [1577] the proper and usual procedure and all that is required of them.

But, on the other hand, I wish to call your attention to the fact that if there is any burden of proof to be sustained in the matter of striking down or impairing the validity of our contract on that score, the burden of proof is upon the Board to affirmatively show lack of representation, either actual or constructive, and not upon the A.F.L. unions to rebut any presumption of lack of representation.

As I say, I think the Board's case sufficiently shows that at the time of the contract the A.F.L. unions had all the employees and so satisfied the employers and were there with their evidence.

If that isn't the fact and the Regional Board relies on that point, I think it is up to the Board to sustain the burden of proof of lack of representation, particularly with respect to the matters of proof which are in the Board's own records.

There seems to be another way in which the Board attempts left-handedly to arrive at the same result, and that is to claim that new matter, whether or not the contracting A.F.L. union, A.F.L. union in this case, had or has a majority of representation, had or has practically 100 per cent representation, that that doesn't count because it followed certain alleged unfair labor practices on the part of the employer and therefore that representation, while apparent, is not real, but is the result of some form of coercion. [1578]

So that the Board occupies the delightful position in playing around with contracts which apparently were meant to be respected on both sides, by honest men, of being able to say, first, "I don't think you had the representation when you made it," and, second, "If you had it, it doesn't count. It doesn't count because the employer did something apparently without your collusion, perhaps unbeknownst to you, that might have affected somebody and which might have resulted in the situation where perhaps one or two out of three or four hundred members you claim to have might have gotten there in your membership on account of something the employer did."

The rule, of course, in this state, as I have mentioned before, at least up to the time of a very recent case, has been, of course, quite the opposite, and has been that insofar as coercion is concerned if the membership of your union results from activities of the union in ascertaining the pressure which it is able to exert upon employees of the employer



through its economic position in the industry, that is all right.

If membership in your union results in actions of the employer which he has been forced to take as a result of the economic position your union occupies in the industry, that is all right, too.

This employer isn't insulated from the industry of which [1579] he is a part. He has no right to be a perpetual scab employer just because he is a separate unit in an industry. The same thing is true of his employees. They haven't a right, if you can prevent it, to enjoy the conditions you make in the industry and pay their dues to an interloping union or no union at all, or pay no dues at all.

There is as much justice and equity—at least so the courts of this state have always felt in such a view of the situation—as there is in the rather narrow view which we often hear at this Board, which attempts artificially and unrealistically to treat the employees of every business and each individual employer in every industry as something separate and apart from the considerations which affect employees and employers throughout the industry itself.

But regardless of that, the theory upon which I have tried this case is this: That insofar as the Board's case shows our right to represent is concerned I have no objection to that evidence. But if on the basis of lack of representation the Board is seeking to strike down or impair, then the proof of that lack of representation is an affirmative obligation of the Board itself, and if they want our rec-

ords they can call for them and our records are available to them, without issuance of a subpoena. I do not have to say that the records of representation that we [1580] delivered over into the Board's possession are available to the Board, that is, the records of representation obtained prior to the election.

Now, on this other point, it seems to me, that is, the question of whether regardless of anything that can be controlled by the union is the contract affected by some independent unilateral action taken by a party of the contract; on that question a rule of reason certainly ought to be employed.

I can visualize a situation and I have seen the C.I.O. do it many, many times before this Regional Board, where an A.F.L. Union is embattled in a terrific struggle with an employer, in the course of that battle all sorts of unfair labor practices are being committed. The C.I.O. Union has a little talk with the employer. They say, "Well, maybe there is another way out of this picture besides an unending struggle with the A.F.L. Maybe if you had a union contract everything would be all right."

And they attempt, under those circumstances and while the struggle is still going on, to make a contract with the employer.

Now, I can see in a situation like that the effect of the unfair labor practices which might carry on so as to affect the acquiescence of the employees in C.I.O. membership. It might militate against their maintaining A. F. L. membership. [1581] It might affect their acceptance of representation and of the contract itself. That question is one of fact, it seems to me.

You can visualize that situation where the affect of the unfair labor practices upon the union is very real, very immediate, very heavy. You can, of course, visualize lots of other comparable situations that come up in our practice, situations where a union that has lost out, either through inactivity or negligence, which is what I think caused the C.I.O. to be in the position that it is in respect to Pioneer Electric Company in this case—I won't say negligence, but the kind of a mistake we all make in governing the affairs of our business. I think Johnny Despol has made one of those kind of mistakes. I think he made the same kind of a mistake anyone might make. I think he chose to ride one horse instead of two, and it proved to be a mistake.

As I say, on the other hand, as apart from that situation where the unfair labor practice is in a position to very seriously affect a contract proposed with another union, we have the classifications in which the unfair labor practices that are unilateral—that is, unfair labor practices of the employer alone—we have the situation where the unfair labor practice is very negligible insofar as it affects the interests of the first union contended for [1582] representation, and sometimes it is charged only for the purpose of blocking the other union, blocking the other union that perhaps had a previous interest, a continuing interest, but it is a good way to say, “Well, now, if the employer has done anything you are out. We get our one crack at the apple. We get our chance to make a contract with the employer. You just have to wait. Not because you have done

anything, not because we have done anything, apparently.”

Therefore, I think we have to consider the effect if we are going to measure up the unfair labor practices against the obligations of the contract upon which the existence of both A.F.L. and C.I.O. Unions almost entirely exist under the present dispensation.

If we are going to measure unfair labor practices against the obligations of contracts, then I think we have to regard them as presenting questions of fact from two aspects. One has the unfair labor practice made it impossible for the contract to be regarded as a fair one and the presentment always ought to be in favor of the contract, it seems to me, when the parties are shown to have no incapacity. And second, presuming that the unfair labor practices occur, are they insulated either in point of time or from other reasons from direct, heavy, immediate, actual and material effect upon the validity of the contract?

Now, that isolation can take place in various ways. [1583] In the first place it can be isolated in point of time. I have a case here I talked over with Mr. Nicoson occasionally. The last time I talked to him about it the situation presented was this:

There had been unfair labor practices occurring in the year 1944. The C.I.O. brought a complaint in about January of 1945. There was a hearing in March of 1945.

The Trial Examiner made his intermediate report in August of 1945, and at the last time I dis-

cussed it with Mr. Nicoson the parties involved in that charge case, the company, the C.I.O., were still waiting for the Board to tell them when they would argue the matter in Washington on oral argument.

Now, shortly after the unfair labor practices occurred the nature of the company's business changed so that the C.I.O., by reason of its jurisdiction of this change in business, lost a great deal of its interest in the jurisdiction, the labor jurisdiction presented by that particular business.

On the other hand, that change in jurisdiction brought within the field of a competing American Federation of Labor Union—the American Federation of Labor Union went in and organized, went in and organized 100 per cent, not at the time of the intermediate report but shortly after or during the time of the hearing. That organization had legitimate causes and reasons besides, and apart from the unfair labor practice [1584] charges.

Those employees are still waiting for a chance to make a contract with the company. Why? Because somebody says that back in 1944 the company committed an unfair labor practice. Those employees are waiting for justified wage increases which have been due them all that time, because nobody can represent them. That is the result of taking and putting a false value on an unfair labor practice and viewing it as something not actionable in and of itself, but something that has an imaginable effect on the part of the succeeding parties, some of them innocent parties, on the ability of innocent parties to contract. That isn't right.

If an unfair labor practice is insulated in one or three or four effective ways from the sort of effect I spoke about on the contract, itself, it ought to be dealt with as an unfair labor practice. The employer ought to be punished, too, if it is guilty. But the union that comes in and tries to give the employees the representation they want and the only representation that can effectively serve them should not be penalized by having its contract struck down or its obligations abrogated, nor should its members be penalized.

Here is a situation in which you have an unfair labor practice that is insulated in about four ways from affecting [1585] this contract. First, it is insulated in point of time. Second, it is insulated because its effect is summed up, vitiated and disposed by an election. Third, it is vitiated because it occurred in another field, that is, among the employees of another company which has been specifically excluded from consideration with respect to the contract, both by the C.I.O. Union and the Board.

Again it is insulated in point of time because it fails to show a continuous effect, it fails to show an effect continuing on this record. It fails to show an effect that could be appreciable in the continuing effect after the date of the election. It fails, in other words, to show any connection with the new organizing campaign of the American Federation of Labor after the election. It fails to show any connection with the dispositions of or the directions of the managing head, Mr. Durant, of the Pioneer Electric Company. It fails to show any degree or

matter of instigation from him on his part or through him.

I urge that taking the last, taking the Board's and C.I.O. contentions on their face, assuming everything they want to believe is true, assuming that coercion occurred, assuming that the company exercised this coercion on its members, assuming that the coercion exercised on the members was in the direction of having them avoid membership in the C.I.O., I say that it is the kind of coercion that the National [1586] Labor Relations Board ought to differentiate from the ordinary type of coercion applied by an employer.

The ordinary type of coercion employed by an employer is put upon his employees for the purpose of taking advantage of them, for seeing to it that they don't have the right to be represented by a labor union or any union of their own choice. That is the average unfair labor practice cases; isn't it?

It is an action taken by an employer who is doing it because it is a part of his policy of discriminating against his employees. It is not in the usual instance the action taken by an employer because he has been forced to it by economic pressure of a type which it is proper for competing labor unions to use.

The record in this case shows, I believe, that if coercion was used by the employer in this case, it was a different kind of coercion, it was a different kind of unfair labor practice which he has been using against the A. F. of L. in all the years since the start of our organization drive and up to the

time of the beginning of the war. It is a different kind of unfair labor practice which has resulted in the almost innumerable charges that we ourselves have filed here against the O'Keefe and Merritt Company.

The record in this case makes it pretty fairly apparent, I think, that as far as the domestic field for the O'Keefe and Merritt product was concerned, the A. F. of L. had the [1587] company pretty well licked when the war came on. There was only one thing that saved it and that was the war time production and going into a period when we could not continue our strike and boycott activities. The record pretty well shows that the employer was forced to the realization—when the exemptions afforded by the war emergency ended, he was forced to the realization that the A. F. of L. fight would be continued, and if that fight were continued the effect of that fight and our boycott would be to put the company out of business.

Now, that is the situation, it seems to me, in which an employer has a right to an opinion, not on the question of shall you or shall you not join a labor organization of your own choosing, but on the question of the company being subject to the legitimate activities of a legitimate labor union, a labor union just as legitimate as the C.I.O. which has never done anything to bring pressure upon the company up to that point of time. Have they got a right to consider whether or not they have to settle with the labor union or not? Have they got a right to decide, "We have got to make a contract



with the A. F. of L. if we want to stay in business"? Have they got a right to make that decision? I think they have. If they haven't got a right to make that decision, what purpose is any strike, what purpose is any boycott, what purpose is any labor activity except to bring an employer to the very decision which apparently had been made by the employer in this case.

Now, all the C.I.O. is hollering about is the fact that the A. F. of L. have made the employer see the handwriting on the wall, and the employer reacted, not against the C.I.O., not in response to anything the C.I.O. did, but the employer reacted as the result of legitimate economic pressure toward the making of an American Federation of Labor contract and toward the actions preparatory to the making of such a contract, a contract which was necessary in view of the dominant position of the A. F. of L. first in the stove industry of this community and second in the building and construction trade industry everywhere.

Mr. Schullman: Mr. Examiner, I am certain it will just take me a few minutes. I came from another hearing in behalf of the—I don't want to mention the other union in the other hearing. I came in behalf of the Painters Union, Local 792. We do not intend to put on any testimony, since the record obviates any necessity of testimony in behalf of my clients. However, we do wish to make two motions that will be very brief, nor will I go into a long argument in support of them.

We move, first, that this action be dismissed in-

sofar as it relates to the Painters' Local 792, and that Painters' Local 792 be dismissed as a party from these proceedings. That is one motion. This motion is predicated factually and [1589] briefly on these positions:

The testimony by the preponderance establishes unequivocally that the Painters Local 792, assuming for the sake of this discussion that the Board and the Examiner will conclude that the identity of the corporation and the partnership was one and the same, that there was no participation in the consent for the election, that there was no authority given to anyone whomsoever to speak for Painters Local 792 during the period of consent before the election, that the Board's exhibits three et sequitur, which related to the election, clearly establish that the C.I.O. either erroneously or otherwise mentioned no other union being interested, or if they knew of the other unions, and particularly the Painters Local, they tacitly recognized that the Painters were exempt from the unit, and if they did not know about them, they excluded them, since they did not give any notice or the Board acting for them gave no notice to any Painters' representative, as the result of which we clearly have, insofar as my client is concerned, speaking singly for them, an improper unit upon which my client cannot be concluded, because neither the Board nor any labor organization speaking without authority for my client can by consent exclude them, preclude them, or conclude them from participation in a unit to which they properly belong, to which clearly in the case they properly belong. [1590]

So much so for the fact that if there is a determination by the Board and the Examiner that the corporate and partnership are the same interests. Of course, if the Board and the Examiner find that there is a separate identity between the corporation and the partnership, then ipso facto, of course, my clients should be excluded. There is no scintilla, iota, or any particle of evidence in this record which in any manner ties in the Painters, and we believe that unquestionably the Examiner will find and the Board, we believe, will find thereupon that the Painters should be carved out, excluded, and the action dismissed as against them.

One more point, without embellishing upon what was stated by counsel who just preceded me, the burden of proof is unmistakably placed upon the Board, the records of which are either in their possession or can be secured, and we will be happy to, without subpoena, produce them, that at the time of the entrance into the contract with the Pioneer Electric Company, Painters' Local 792 did represent not only a majority but all of the painters involved and employed at the premises at the time.

For these reasons, insofar as the first motion is concerned, we believe that it is imperative and obligatory upon the Examiner and the Board to dismiss these proceedings as against my client.

Before going into the second motion, since the matter involved primarily concerned the company but since it may affect some of the consideration, I believe from whatever part of the testimony I have heard there is a parallel and continuing differentia-

tion of identity between Pioneer Electric as a co-partnership and O'Keefe and Merritt, which distinguishes the facts in this case, without attempting at this time to enumerate them, and the facts in cases such as the Simmons case which came down within the last several months, and the War Labor Board case which came down shortly thereafter, and all of the other cases that continue the certification on the succeeding new corporation. One of the distinguishing factors, of which there is an abundance, is the fact that Pioneer was in existence long before the contemplation of the parties herein, certainly before the contemplation of the C.I.O.; that it did not take over all of the operations or the substantial operations of O'Keefe and Merritt; that there was less than a 50 per cent controlling interest by those who are interested in O'Keefe and Merritt and those who are interested in the Pioneer Electric Company; that as a matter of fact O'Keefe and [1592] Merritt had other companies who did make and did perform substantially for them during the war period. I am going to let the record speak on that for itself, because I think that is the burden of the company and the Board, but I do think from a purely legalistic standpoint, I do not think we can attach stare decisis of the Board in previous decisions as affecting this case.

My second motion that this action should be dismissed insofar as my clients are concerned and as a party to the action, because the only thing sought insofar as they are concerned by way of relief is the attempt to strike down a valid and subsisting con-

tract. I believe and therefore I think that my second motion should be granted, that this Examiner and primarily the Board is without jurisdiction to impair the obligation of a contract where under these facts indicated in this case there is such a contract between a company and a bona fide labor organization concerning which there is no dispute. My client being part of the American Federation of Labor, I think it has been stipulated is a bona fide labor organization. The testimony is clear that at the time—there has been no contrary burden met by the Board—it represented all or at least a majority of the painters involved. Representations were made to my client that this was the Pioneer Electric Company. At that time he had no knowledge of any other [1593] action or certification or anything else, speaking of he meaning the union; that thereafter the union could and did enter into a contract.

I am familiar with the case of Consolidated Edison Company, which spoke in dicta fashion about the right of the National Labor Relations Board under certain circumstances to strike down a contract, but I say this, and I suggest it be read very carefully, as I am sure everybody has, insofar as the legal statement is concerned the Consolidated Edison case is authority for the fact that the National Labor Relations Board does not have the right to strike down a contract, and then in dicta it goes on to say perhaps under certain circumstances it might. That is not decision. That is dicta. More properly, I think when we scrupulously read the

Act, as I interpret it Congress did not intend to give power to the National Labor Relations Board to invalidate a subsisting valid contract properly executed between the parties, when one of the parties was a bona fide labor organization, and if any such authority exists in Congress or in the Act, those who are given the right to administer the Act in their attempt to do so would be going beyond the fiat powers, and any act they would undertake would be invalid and would be illegal and have no force and effect. We will deal with that in our brief at some length. [1594]

Trial Examiner Kent: Yes. Apropos of that, I may call your attention to the International Association of Machinists' case.

Mr. Schullman: I am familiar with that. I say that in all those cases I will draw the preliminary line of distinction that this issue we are now presenting has not been determined as a matter of law and is clearly, as is argued by Mr. Garrett and effectively, under the facts in this case as in the Consolidated case is dependent upon those facts. There is no question that this is a bona fide labor organization, there is no question that a valid contract was executed when we represented all the people involved, and representations were made that this is some other group entirely. I say that I think that the only way the Board can reach the American Federation of Labor unions in this case is through the relief sought of striking down the contract. There is no other relief with which we are concerned. We are named as a party, incidentally not

under the Act itself, something I don't know if it has been raised before, and I don't intend to raise it at great length now, but the Act itself in a complaint action does not designate a union as a party. It is the rules which suggested it, and those rules cannot go beyond the limitations or the purview of the act itself. If they attempt to go beyond them, there is a want of authority to do that, [1595] then the rules themselves are of no force and effect. So I say the naming of parties is merely a gratuitous suggestion of the Board.

Trial Examiner Kent: I wonder if the Consolidated Edison case did not indicate that a contract could be stricken.

Mr. Schullman: It did.

Trial Examiner Kent: But held in that case because the labor unions were not made parties that they would not strike it.

Mr. Schullman: That Consolidated Edison case, as I read that case and study it in detail, it just stated that it could not be stricken as a matter of law, on the facts proven by the National Labor Relations Board. Then it went on in dicta, not in decision, and said perhaps—I am paraphrasing—perhaps if certain other factors were true we might do it. I say therefore that the better law and the law which probably should be followed, because there is no authority in the Act also, that you cannot strike a valid contract. The National Labor Relations Act never had that power.

Trial Examiner Kent: No, I grant that. I don't think that a valid contract can be stricken. The

main issue I think is whether or not this is a valid contract.

Mr. Schullman: And before you can find the contract is [1596] invalid, you must find that this is not a bona fide labor organization, but if it is a bona fide labor organization I think you are precluded from going farther, at least we will cogently argue that in our brief.

I say that there are two alternatives, first, that there is no evidence whatsoever against my client on the first portion, and also, if the Board finds that the identity of the parties was the same, these respondents are, if they find they are separate entities, then of course we are out of the picture. Then on the facts we are not involved and should be dismissed; that as a matter of statutory law the relief sought against my client and presumably against the other unions could not be granted under the facts.

Trial Examiner Kent: I don't think the question of company domination, the complainant does not allege that any of the A. F. of L. unions are company dominated. I think Mr. Nicoson will agree on that, won't you, that you are not claiming that?

Mr. Nicoson: There is no allegation that the A. F. of L. union was company dominated.

Trial Examiner Kent: So you do not have to meet that.

Mr. Schullman: Then I think we reach this constitutional question. This Board then, if the union is not company dominated, I don't think then this Board has any right as [1597] a matter of law to



strike down the contract. I will be glad to go into detail on that in the brief.

Trial Examiner Kent: The issue to be determined is whether or not the company rendered any assistance.

Mr. Schullman: Assume they did——

Trial Examiner Kent: That is your I.A.M. case.

Mr. Schullman: Assuming they did, if they render assistance under the identity of a different and separate corporation as against a co-partnership, under which we have continued for a great many years and still continue to have a contract with the A. F. of L. unions, when they represented a majority, you would be acting unconstitutionally in an attempt to strike down the contract.

Trial Examiner Kent: I would like counsel to consider the International Association of Machinists against the N.L.R.B. case.

Mr. Schullman: I will include that.

Trial Examiner Kent: That Supreme Court decision. In stating that, my mind is not made up, because I have got to balance the principles of those decisions with the factual situation in the actual case.

Mr. Schullman: But Mr. Trial Examiner, that is just from a legal standpoint now. On the factual standpoint, assuming that that case would be the law, I am talking about the language of the Supreme Court in the Consolidated Edison [1598] case, then under the facts in this case this court must find that the contract is a valid and subsisting contract.

Trial Examiner Kent: Oh, yes, the factual issue has to be decided, and there are a number of collateral issues that have indirectly got to be disposed of. It is not by any means, I don't think, a case which can be resolved into a simple single issue. That is the reason that I think it is a very interesting case. I think there are some interesting issues raised.

Mr. Schullman: Except irrespective of what conclusion the Trial Examiner or the Board may reach, insofar as the painters' local is concerned, only one conclusion can be reached ultimately, because there was no testimony concerning them at all.

Trial Examiner Kent: Well, that again is a question of the record. It is quite a long record and I can't——

Mr. Schullman: We do not ask an immediate decision.

Trial Examiner Kent: I am not making one, and I am not finding as fact what is in that record at this time.

Mr. Nicoson: Do I understand that both A. F. of L. groups have rested? I have two rebuttal witnesses I want to call. Do I understand that you gentlemen have rested your cases?

Mr. Garrett: I have found a negative pregnant in my answers that I want to correct. With that I will rest. [1599]

Mr. Schullman: I have rested my case, since I think it would be a superfluity to put in any evidence.

Trial Examiner Kent: Now, I suggest that you gentlemen may have the privilege of the same twenty days that are granted Mr. Collins.

Mr. Schullman: May I have permission to withdraw? I came here from another hearing, and I want to get back. Thanks very much.

Trial Examiner Kent: Surely.

Mr. Garrett: I notice first on these answers, and I have got three of them in. There is a requirement for a power of attorney on the one filed by respondents. I suppose that my filing of answers has been more or less a gratuitous act anyway, and I assume that requirement in the rules could be waived. All of my answers are verified by persons who are known to represent the labor organizations involved. I think only one of them actually is accompanied by a power of attorney. Is there any point to be made on that? Is it possible to have the stipulation that the requirement for the power of attorney be waived? Our placing of an answer in here, under the Consolidated Edison case I appreciate might be a matter of some significance as conferring jurisdiction. I will need time to file those other two powers of attorney if the requirement is not waived.

Mr. Nicoson: I make no point of it for the Board. [1600] So far as I am concerned I will stipulate that it may be waived. I have some doubt as to my power to stipulate or waive the rules of the Board, but I think——

Trial Examiner Kent: Well, I suppose you could

safely stipulate, but the power may be something else.

Mr. Nicoson: I have nothing to raise on that, no objection to that for that reason.

Mr. Garrett: I will let them go by that, on the simple verification. I found a negative pregnant that occurs in all of the answers, and I would like to correct it.

Trial Examiner Kent: Well, I wonder, if it is in effect, if it has not been waived by failure to object earlier anyway.

Mr. Garrett: You mean that that requirement perhaps is waived? No, there isn't any requirement. I suppose that participation by contract parties in this type of proceeding is so new that no board rule has been devised as to that. The requirement for powers of attorney seems to run only to respondents.

Trial Examiner Kent: In any event, of course it is not mandatory for the party to file an answer. That is a privilege under the rules that the party has. There is no question but what you fully participated in the proceedings, and so I think it is probably rather highly technical, and I can't see how you are prejudiced. [1601]

Mr. Garrett: Now, this negative pregnant occurred in my attempt to deny, and these answers were prepared rather hurriedly, the allegation in the complaint in Section 5-D, that at the time of entering into the A. F. of L. contract, none of the A. F. of L. organizations was the duly designated bargaining representative of the employees at that

time. I propose by way of amendment to the answers of all of them that the following matter be added at the end of paragraph three of the moulders' answer, the carpenters' answer, and the stove mounters' answer: "And this answering labor organization alleges it was said duly designated bargaining representative of said employees at the time of entering into said contract."

I ask leave to make that amendment by interlineation.

Mr. Nicoson: No objection.

Trial Examiner Kent: The amendment will be granted as requested.

Mr. Garrett: That is our case.

Mr. Nicoson: I will call Mr. John Despol.

Trial Examiner Kent: We will take a recess of five minutes.

(Short recess.)

Trial Examiner Kent: Do you want to answer the motions?

Mr. Nicoson: Just so the record is complete, note my opposition to the motion, and I do not agree with what was [1602] said, I do not agree that that is a fair summation of the evidence, and I stand on the record.

Trial Examiner Kent: I will reserve ruling on the motions and I shall directly or in effect upon all motions in my intermediate report.

JOHN DESPOL

recalled as a witness by and on behalf of the National Labor Relations Board, being previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. You are the same Mr. Despol who has previously testified in this hearing, are you not?

A. I am.

Q. Directing your attention, Mr. Despol, to the latter part of December, at which time you testified you had a meeting with Mr. Cecil Collins of O'Keefe and Merritt Company, at which present besides yourself and Mr. Collins were Johnny Lovasco, Joseph Sanchez, Frank Doyle and another person; I will ask you whether or not during the discussions of the contract that ensued at that meeting Mr. Collins said to you this or this in substance: This may be all in vain, no contract may be necessary, there may not be an O'Keefe and Merritt Company, and that they were contemplating switching over and organizing a new firm under the name of the Pioneer Electric Company. Was that said or not?

A. He did not, not at that time.

Q. Did he say that at any other time?

A. At the meeting that I had with him in the bar.

Q. Did he say that at any other meetings that you held with him in Collins' office? A. No.

Q. Did you have any other meetings with respect

(Testimony of John Despol.)

to the contract with Mr. Collins except in the office and those two occasions at the bar?

A. Not where we discussed the contract.

Q. At the same meeting did Mr. Collins say this to you or this in substance: That those negotiations, referring to the switching over to the Pioneer, were then under way. Did he say that or anything like that? A. No.

Q. Did he say that at any of those meetings, and excluding those two at the bar that you had with him? A. No.

Q. At this same meeting and at the same time and place, did you say anything to Mr. Collins with respect to the C.I.O. having done considerable organizing work at a considerable expense? Did you say that or that in substance at that meeting?

A. No.

Mr. Garrett: What meeting was that? [1604]

Mr. Nicoson: It is the last half of December.

Q. (By Mr. Nicoson): Did you say that to Mr. Collins or that in substance at any meeting you had with Mr. Collins excluding those two at the bar?

A. No.

Q. Did Mr. Collins at this time and place say to you this or this in substance, that he would be willing to take it up with his plant to see whether or not some sort of adjustment about the organizational expense could be made? Did he say that or that in substance? A. Definitely not.

Q. Did he say that at any of your meetings excluding the two at the bar?

(Testimony of John Despol.)

A. At no time, including those at the bar.

Q. Including those at the bar. At this same time and place did you say this to Mr. Collins or this in substance, that you guessed you had made a mistake and that you should have included the Pioneer in the election. Did you say that or that in substance at that meeting?

A. No. I was not aware of the Pioneer Electric at that meeting.

Q. Or at any other time? A. No. [1605]

Q. Did you say at that meeting, at the same time and place, that you guessed you would have to go to the National Labor Board to get them to help you out of this fix? Did you say that, or that in substance at that time? A. No.

Q. Did you say that at any of the meetings outside of the two at the bar? A. No.

Q. Excluding the two at the bar. Did you say that at the bar?

A. We stated at the bar that we would file an unfair labor practice case.

Q. At the meeting at approximately the middle of January at which was present yourself, Mr. Despol, Bud Daley, Cunningham and two other persons, did Mr. Collins say to you at that time and place he saw no reason for continuing the meetings since there would be very few O'Keefe and Merritt employees to make it worth your trouble? Did he say that, or that in substance?

A. No, definitely not.



(Testimony of John Despol.)

Q. Did he say that at any time excluding the two bar meetings, to you?

A. Well, after the two bar meetings, he called me on the phone and he, in effect, as I previously testified said there [1606] were no O'Keefe and Merritt employees.

Q. But excluding the two meetings at the bar and confining your answer only to meetings that you had with Mr. Collins, as you said—

A. No.

Q. At this same meeting, at the same time and place in the presence of those same persons, did Mr. Collins say to you this, or this in substance, that another company contemplated transferring all production to another firm? Did Mr. Collins say that, or that in substance to you?

A. No.

Q. Did Mr. Collins at the same time and place and in the presence of the same persons say to you this, or this in substance, that you mentioned that if another vote was to be authorized by the N.L.R.B. it would very likely sway the issue? Did he say that, or that in substance?

A. Will you read me that question, please?

(The question was read.)

Mr. Nicoson: At this time.

The Witness: I don't know what is meant by "sway the issue."

Q. By Mr. Nicoson): Do you remember him making that statement or any statement like that?

A. The only statement I recall him making is that in his understanding most of the employees

(Testimony of John Despol.)

were supporting the [1607] A. F. of L. and not supporting the C.I.O.

Q. When did he say that?

A. At one of our meetings in January, I don't recall which.

Q. Do you recall whether that was in the presence of Daley and Cunningham and the two other A. F. of L. people or not?

A. I don't recall what particular meeting it was said at.

Q. Not, at this same January meeting, do you recall having said to Mr. Collins this, or this in substance, that you were the authorized representative of the C.I.O., that you had gone to expense and trouble about the organizational work, and that you would continue. Did you say that, or that in substance?

A. This was at the bar you are referring to?

Q. No, this is the middle of January. Did you say that to him, or that in substance?

A. No, I don't recall any conversation of that nature.

Q. I am not at this time asking you anything about the bar meetings, unless I tell you so. At that same meeting, did Mr. Collins say this to you, or this in substance, that he did not see how Despol had any right to continue since the majority of the employees favored the A. F. of L.? Did he say that or that in substance at this January meeting?

A. He did not say that, as I just previously said, he said that, in his opinion— [1608]

(Testimony of John Despol.)

Q. Did Mr. Collins at this time and place say to you this, or this in substance, "Why mention the expense of organization? I mentioned before I am willing to discuss the matter with my client and see if we can reimburse you for what expenses you have had involved." Did he say that, or that in substance at the January meeting? A. No.

Q. Did he say that at any other meeting, excluding those at the bar? A. No.

Q. At any meetings that you had with Mr. Collins, except the two at the bar, did Mr. Collins state to you this, or this in substance, that the Pioneer was taking over and fabricating parts for O'Keefe and Merritt? A. No.

Q. The witness John Lovasco at page 1487 and 1488 of the record testified as follows:

"Q. Did Mr. Despol ever tell you he didn't want you to attend any meetings?

"A. Yes.

"Q. What did he say to you?

"A. This was after I had already attended that meeting there, and it was, I believe, when they had put on their first demonstration, or so-called picket line, out there, that he, after the 8:00 [1609] o'clock whistle blew, why, naturally, I was coming in, straggling in a little late that morning, and he greeted me on a side street and he says, 'John,' he says, 'I don't want you to attend any more meetings, that Collins and I want to discuss this contract over.'

(Testimony of John Despol.)

“I says, ‘As long as there is going to be a contract discussed’ I says, ‘I will be there or other A. F. of L. members will be there to see that nothing is pulled.’ So he then grinned at me and he said, ‘Johnny, I like you very much.’ ” [1610]

“I says, ‘I like you, too.’

“And he says, he told me, he says, ‘I don’t want anything to happen to you.’

“I says, ‘I don’t think anything is going to happen to me.’

“Q. Happen to what?

“A. Happen to me. He says, ‘Well, we got means and ways of taking care of fellows like you.’

“Then, I says, ‘If you have, you take care of yours and,’ I says, ‘but I will take care of mine,’ and I walked away.”

Did any such meeting or conversation occur as that?

A. I once told Mr. Lovasco at the plant gates, following the two sessions on the contract with Mr. Collins, that we would not permit any further presence in our negotiations of any employee purporting to represent the A.F.L.

Q. Did you say to him at that time or at any other time this, or this in substance:

“‘Well, we got means and ways of taking care of fellows like you.’ ”?

A. No.

Mr. Nicoson: That is all.

(Testimony of John Despol.)

Cross-Examination

By Mr. Garrett:

Q. When you told Mr. Lovasco you couldn't have him at any more meetings, did he agree that he would [1611] stay away or did he indicate some disagreement with your position?

A. I don't recall whether he indicated agreement or simply said nothing about it; one or the other. He didn't indicate that he would pursue efforts to attend any further sessions, I am sure of that.

Q. So you didn't have to tell him anything about what would happen to him if he did?

A. That is correct.

Q. It took me quite a long time to find this, Mr. Despol. You will have to pardon me.

But in connection with your last answer about what you told or didn't tell Mr. Lovasco about coming to meetings, I would like to read you from page 740 of the transcript. It is about the twelfth line.

Mr. Garrett: Have you the page, Mr. Nicoson?

Mr. Nicoson: Yes. Go ahead.

Mr. Garrett: I will start with the fourth line.

Q. (By Mr. Garrett): You were asked this question, Mr. Despol:

“Q. Didn't you tell one of the committee men, Mr. Johnnie Lovasco, not to come to the meeting, you didn't want anybody at those meetings?

“A. I don't recall when it was I told Lovasco. One time I told him I hoped he would not

(Testimony of John Despol.)

attend any more [1612] meetings because no meetings would be conducted with his presence from there in.

“Q. Did you tell him you hoped he wouldn’t come there or he better not come there?”

“A. He better not come there, there wouldn’t be any meeting.

“Q. You didn’t tell him what it meant, you merely told him he better not come there?”

“A. I told him he better not come there, there wouldn’t be a meeting.”

Did you so testify?           A. That is correct.

Q. Just one question. I was trying to find whether I asked it before or not. I can’t find it in my previous cross-examination.

Will you state, Mr. Despol, when you first heard mention of the Pioneer Electric Company?

A. I was under the impression I had heard mention of it from Mr. Anaya, I think, to which I testified. During the recess I questioned Mr. Anaya and Mr. Conway, both, about it, and they told me I was incorrect, it was a trucking company they had reference to, the name of which I don’t know and I don’t think they know.

Q. That was in connection, as you recall it, with the discussion of the April, 1944 Board hearing?

A. That is correct. The second time and the only time I clearly recall the name Pioneer Electric being mentioned was my meeting with Mr. Collins at the bar on the 25th of January.

Q. Now, of course you don’t know what your

(Testimony of John Despol.)

local union officers knew, Mr. Despol, but you do recall the time of the first organizing drive, do you not, at the O'Keefe and Merritt plant?

A. Yes.

Q. What was the year of that?

A. The first?

Q. Yes, the first one.

A. The first one—that was put on by the International Union, not the local union. That was in 1940, as I recall.

Q. Before the war or after?

A. Before the war. It was not an intensified drive, the first—

Q. Mr. Charles Spallino has testified here, the record shows, about being in a meeting at the company office at which he claimed he was reprimanded for, or his attention was called to the fact that he had been to a meeting for O'Keefe and Merritt employees in the United Steelworkers Hall on Slauson. He was indefinite about the time of that, but he put it at the earliest at 1942.

Do you place any organizing activity at or somewhere [1614] after that date?

A. I believe there was some effort in 1942, pretty much the same nature as 1940. So far as I know the first intensive drive we made was in 1944, in the sense there was full scale effort.

Q. Well, I will call your attention to the fact that the evidence here shows that Pioneer Electric had considerable employees in 1942, and thereafter they were separated from the O'Keefe and Merritt

(Testimony of John Despol.)

employees by a physical partition in the building. You heard that testimony; didn't you?

A. Yes.

Q. Yes? A. Yes.

Q. When, in connection with that—

A. We were not aware of Pioneer Electric. Mr. Anaya, who was running the 1944 campaign, was not aware of Pioneer Electric in my conversation with him until after the National Labor Relations Board hearing was held. It was his impression then, and Mr. Conway's impression, who was connected with it, a trucking company was involved.

Q. You must mean the Service Incorporated?

A. Yes, Service Incorporated trucking service.

Q. That wouldn't be enough employees, Mr. Despol, to affect the vote when you came back and stated that you wanted to correct your testimony. The evidence given since [1615] seems to show they only had 8 or 10 employees.

A. That is correct. Mr. Anaya says my impression of what he said to me was wrong. The basic factor that caused us to be unable to secure an election in '44 was there had been a large layoff of employees at that time, and that the majority of those laid off were those that had been signed up with our organization. That factor, their names were not on the payroll submitted to the Board, was responsible for us not securing an election at that time.

Q. Can you agree with me now it couldn't have been the reason for your failure then that the



(Testimony of John Despol.)

Service Incorporated Trucking employees were not on the payroll?

A. I will agree with you in that.

Q. Now, without trying to argue with you, Mr. Despol, about what your subordinates knew or should have known, the evidence—and I think it is evidence since you testified, too—has come to seem to indicate around here from 1942 on that all through 1944 a large part of the employees at that location—perhaps the majority—were employees of Pioneer Electric of that generator work. Is that a fair statement of the evidence?

Mr. Nicoson: I object to it as not being a fair statement of the evidence.

Mr. Garrett: What is the correct evidence on that?

Mr. Nicoson: During the war time—this is not in the [1616] evidence—O'Keefe and Merritt had approximately 400 to 450 employees. The most Pioneer is shown to have had is 180.

Mr. Garrett: All right.

Mr. Nicoson: I further object to this line of questioning on the ground it is not proper cross-examination of rebuttal testimony and it has been asked and answered. He went over it when Mr. Despol was on the stand before. Now, I don't want to stay here all night.

Trial Examiner Kent: I think the objection is well taken. I will sustain the objection.

Q. (By Mr. Garrett): When you learned after the April, 1944 election of the presence of Pioneer

(Testimony of John Despol.)

Electric interest in the location down there, when was that?

A. We didn't learn of Pioneer Electric's presence in the form it is now appearing to have been. What we were aware of was the lay-off and of the service company set-up.

Q. There is evidence here, stated by Mr. Nicoson, that through that time there was a large—not a majority, but Mr. Nicoson mentioned 180 Pioneer employees. How could you possibly have missed that large group?

A. I can't explain that because I wasn't here at the time of the '44 campaign. I would like to know myself.

Q. You never learned about the Pioneer group even after that 1944 N.L.R.B. case, until Collins first told you about it at the bar; is that right?

A. The first time I heard the name of that company.

Q. Had you ever been around the plant prior to that organizing drive in 1944?

A. No. I wasn't in the '44 campaign, except in the winter for a few weeks, because the balance of that year I was in Washington, D. C.

Q. You knew, Mr. Despol, at that time all these war plants, all employees were required to wear an identification badge with the name of their employer prominently displayed on it, and the number and so on. How do you account for the fact throughout that entire period from 1942 up to 1945 none of your representatives or local union officials were

(Testimony of John Despol.)

unable to detect such a large group of men wearing identifying badges that said "Pioneer Electric Company" on them?

Mr. Nicoson: I object to the question on two grounds. First, it is improper cross-examination of a rebuttal witness. Second, it had been asked and answered. He laboriously examined this witness when he had him on cross. I don't think, your Honor, we have to sit here all night and let him recross examine this witness on all matters. He has a right to cross-examine him on the matter brought out on rebuttal. He certainly doesn't have to go back over the whole case and reexamine him and cross-examine him on everything.

Trial Examiner Kent: Now, that is true, as far as rebuttal goes. I will let the answer be taken. I think until [1618] the hearing is closed that counsel may treat it as practically calling a witness on direct and asking any questions material to the issues.

Q. (By Mr. Garrett): I am frankly asking you a question relating to the knowledge of your subordinates. I would like to hear what you have to say on that subject.

A. The campaign was conducted by representatives of the International Union over the period you speak of. As I have indicated, the 1940-1942—the effort was only sporadic. In '44 I was not here. The only few times I was out in the plant the winter of '43-'44 I don't recall seeing any Pioneer Electric badges, so to speak.

(Testimony of John Despol.)

Q. Did the employees you saw have identification badges?

A. The other—yes, I think they all had badges on. The other representatives of the union at no time either long distance conversation or since my return have indicated any knowledge about the operation of the Pioneer Electric per se.

Q. What did you mean by “per se”?

A. As such. Isn't that what it means?

Mr. Nicoson: That is pretty close.

Q. (By Mr. Garrett): I can't follow your Latin.

A. You lawyers argue out the language.

Mr. Nicoson: That is pretty close.

Q. (By Mr. Garrett): That “per se” makes me ask one more question. Did they indicate anything— [1619]

A. I withdraw the per se.

Q. Did they indicate anything other than per se?

A. I don't understand the question. I withdrew the per se.

Q. Your answer would be the same without the per se?      A. That is correct.

Mr. Garrett: All right. That is all.

Trial Examiner Kent: You may be excused.

Mr. Nicoson: Mr. Conway.

G. J. CONWAY

a witness called by and on behalf of the National Labor Relations Board, having been previously duly

(Testimony of G. J. Conway.)

sworn, was recalled and testified further as follows:

Direct Examination

By Mr. Nicoson:

Q. You are the same Mr. Conway that previously testified in this hearing; are you not? A. I am.

Q. And it was your testimony that you attended some of the meetings Mr. Despol had with Mr. Collins? A. I did.

Q. Did you attend any at which the so-called A.F.L. committee was present? A. I did.

Q. Which one or ones did you attend?

A. I attended one.

Q. When did that occur? [1620]

A. As I remember, the last of December or the first part of January.

Q. At that meeting at that time and place did Mr. Cecil Collins say to Mr. Despol, or to you this or this in substance:

“This may be all in vain. No contract may be necessary. There would not be an O'Keefe and Merritt Company. They were contemplating switching over or organizing a new firm under the name of Pioneer Electric Company?”

A. They did not.

Q. Did Mr. Collins at that time and place say, “The negotiations were then already under way”?

A. He did not.

Q. Did Mr. Despol at that time and place say,

(Testimony of G. J. Conway.)

“The C.I.O. has done considerable organization work and has had considerable expense”?

A. He did not.

Q. Did Mr. Collins at that time and place say this or this in substance, “His client would be willing to make some sort of adjustment in the matter of organizational expenses”?

A. He did not.

Q. Did Mr. Collins or Mr. Despol say anything of those things at any of the meetings you attended, except the two at the bar, or one at the bar? [1621]

A. He did not.

Q. You only attended one at the bar?

A. That is right.

Q. Did you hear Mr. Despol say this, or this in substance, “He guessed he had made a mistake, he should have included Pioneer in the election”? Did you ever hear that?

A. He did not.

Q. Did you hear him say this or this in substance, “He would have to get the N.L.R.B. to help him out of this fix”? Did you hear that?

A. He did not.

Q. At any of the meetings that you attended, was any mention made of the C.I.O.’s expense?

A. The word “expense,” to the best of my recollection, was never mentioned while I was there. The word “expense” was never used.

Q. With the exception of the meeting that you attended at the bar, at the time you met with Mr. Collins in meetings, did he say to you that he would take it up with his client, to see whether or not he

could work out some adjustment for paying the C.I.O.'s expense?      A. He did not.

Mr. Nicoson: That is all.

Mr. Garrett: That is all.

Trial Examiner Kent: You may be excused.

(Witness excused.) [1622]

Mr. Nicoson: At this time, if your Honor please, I move to conform the pleadings with the proof, which is the usual motion and runs, of course, only to minor matters such as spelling of names, and dates, and so forth, and does not go to the material allegations of the complaint.

Trial Examiner Kent. The amendment is granted accordingly.

Mr. Garrett: That is a shotgun motion, if I ever heard one.

Mr. Nicoson: We always make it. May I make another motion? At this time I move to strike the testimony of witness William J. O'Keefe, appearing at page 1449 of the record, which is as follows:

“The Witness: You told me you were bargaining with Despol for O'Keefe and Merritt Company, and in return for handling the thing in a quiet and orderly manner—in fact, if I remember correctly, you wanted to refer it to the Labor Relations Board. And in consideration for no strikes or violence of any kind you had discussed with Despol paying his organizational expense and so forth he had incurred so far in the organization of our company.

“Q. (By Mr. Collins): I was going to pay it or I would see my client—

“A. You asked if the company was willing to pay that [1623] expense.”

I move to strike that testimony under the ruling that your Honor made on page 1442 in which you reserved your ruling subject to motion to strike if Mr. Collins did not testify about this matter. Mr. Collins has not testified, and I move to strike it.

Trial Examiner Kent: I will reserve ruling at this time on the motion, pending the consideration of the record.

Mr. Garrett: I renew all motions to strike, which I have made, at this time.

Mr. Nicoson: Let me finish, now. I understand there is some question about Respondent's 1 and 2, whether or not they are in evidence.

Trial Examiner Kent: Yes. I might state for the record that when Mr. Collins made his original oral motion for continuance he handed the reporter a letter and affidavit in support of his motion. I didn't know anything about it at the time. Within the next day or two the reporter called my attention to the fact those exhibits had been handed in.

I brought the matter up with Mr. Collins and suggested that he, during the presentation of his own case, formally offer them so they might be exhibits. At the time I had reserved Exhibits numbers 1 and 2 and had in mind his first exhibit he offered as No. 3.

In view of the fact Mr. Collins has been excused, I will offer them. [1624]



Mr. Nicoson: I have no objection.

Trial Examiner Kent: I will offer them as Respondent's Exhibit 1—Trial Examiner's Exhibit 1 and Respondent's Exhibit 2—Trial Examiner's Exhibit 2.

I believe on one of them there was not a copy, the affidavit. I will waive the requirement on that exhibit, that a duplicate be submitted.

(Thereupon, Respondent's Exhibit No. 1—Trial Examiner's Exhibit No. 1 and Respondent's Exhibit No. 2—Trial Examiner's Exhibit No. 2, were marked for identification and received in evidence.)

RESPONDENT—TRIAL EXAMINER'S  
EXHIBIT No. 1

[Letterhead O'Keefe & Merritt Co.]  
(Copy)

March 1, 1946

Mr. Stewart Meacham, Regional Director  
National Labor Relations Board  
111 West Seventh Street  
Los Angeles, California

Dear Sir:

I have just been handed a Subpena Duces Tecum (received here on February 27, 1946—which gave our attorney approximately one week, along with his many other appointments already made—to prepare our case) ordering me to appear before you on March 6th, at the hour of 10:00 a.m., at Room 704, 111 West Seventh Street, Los Angeles, California.

I immediately called our Attorney, Mr. C. W. Collins, for advice concerning this matter. He informed me that he had talked with you on the telephone a few days ago, requesting the continuance for the benefit of the Pioneer Electric Company, which he also represents, and that he advised you that one of the partners, Mr. W. G. Durant, was, at that time, in Washington, D. C., another in Honolulu, Hawaii, but that you refused even a one week's continuance so that he might contact his clients, even though you set the case originally to suit the convenience of the C.I.O., and then gave them a continuance of over a week to amend their charge.

He also advised me that in his conversation with you—wherein he requested a short continuance—you stated: “. . . that you will be before the Supreme Court within three months, because the facts in this case show such a flagrant violation that you would not permit any delay. . . .”

Now, it would seem that the facts in the case constitute a report from a disgruntled C.I.O. Organizer, inasmuch as no one from your office was interested enough to ask for our side of the story. As I understand it, the usual practice is to call the interested parties together for an informal interview. It would therefore appear, as mentioned above, that the C.I.O. Organizer's report becomes the facts and you have already decided the case without giving us the usual courtesy of an opportunity to be heard informally, prior to filing the complaint. This would seem to justify the many

reports I have heard—that the N.L.R.B. in this district is very biased in favor of the C.I.O. and, for this reason, neither an employer nor the A.F.of L. can expect fair treatment.

Therefore, inasmuch as you know that you have the facts in the case and have decided against us, I would like to ask if there is any way we could save our time, as well as that of our employees, as it seems useless to appear and attempt to defend ourselves in a case that you have already decided against us. Any suggestion along this line will be much appreciated. I hope you will give me the courtesy of a reply.

Very truly yours,

O'KEEFE & MERRITT CO.

D. P. O'Keefe

Py

[Endorsed]: Filed March 28, 1946.

RESPONDENT—TRIAL EXAMINER'S  
EXHIBIT No. 2

County of Los Angeles,  
State of California—ss.

L. J. Mitchell, being one of the partners of the Pioneer Electric Company, being first duly sworn, deposes and says:

That Marion Jenks, a partner of Pioneer Electric Company, is absent, being in Honolulu, Hawaii, and that W. G. Durant, a partner of Pioneer Electric Company, is also absent, being in Washington, D. C.;

That affiant does not have the authority to bind these absent partners;

That affiant authorizes Cecil W. Collins to represent them and to protect the rights of the copartners and to seek a reasonable continuance of Case No. 21-C-2689 to permit the absent partners to appear and defend themselves and the copartnership.

Dated at Los Angeles this 25th day of February, 1946.

/s/ L. J. MITCHELL

Subscribed and sworn to before me this 25th day of February, 1946.

[Seal]      /s/ JEAN H. SHEPARD,  
Notary Public.

My commission expires 3-11-49.

[Endorsed]: Filed March 28, 1946.

Mr. Garrett: Will the exhibits be available here until Monday?

Trial Examiner Kent: Well, Mr. Nicoson, I believe, made a statement on the record the other day that he had copies in his own file of all exhibits. Did you not, Mr. Nicoson?

Mr. Nicoson: Yes.

Trial Examiner Kent: Therefore, you will not be inconvenienced. You may see Mr. Nicoson when you want to check on the exhibits.

Mr. Nicoson: Let me make sure that is clear. I have copies of everything except those rejected exhibits of the company's which were rejected.

Mr. Garrett: I wouldn't want to look at them.

Trial Examiner Kent: If there is nothing further, the hearing may stand closed.

(Whereupon, at 5:00 o'clock p.m., Thursday, March 28, 1946, the hearing in the above-entitled matter was closed.) [1626]

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BOARD'S EXHIBIT No. 10  
OR-1-R  
AGREEMENT

This Agreement, dated....., 194...., is entered into between ..... (hereinafter referred to as the "Company") and the United Steelworkers of America on behalf of the members of Local Union ....., C.I.O., (hereinafter referred to as the "Union").

Witnesseth:

It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relations between the employees and the Company and to herein set forth the basic Agreement, covering rates of pay, hours of work, and conditions of employment to be observed between the parties hereto.

Section 1—Recognition:

A. The Company recognizes the Union as the sole collective bargaining agency for all its employees within the bargaining unit, as certified by the National Labor Relations Board.

B. Rival Organizations: The Company declares that it will pursue the firm policy of not aiding, or

supporting, in any manner whatsoever, any organization for the purpose of undermining the present Union.

C. **New Employees:** The Company shall inform, in writing, all new employees, at the time of hiring, that the Union is the sole and exclusive bargaining agency for all employees covered by this Agreement.

Section ....—Union Security:

1. So long as this agreement continues in effect, membership in the union shall be required as a condition of employment for all employees of the Company on the payroll as of this date and for all new employees hired by the Company during the continuance of this agreement, but the Company shall have the exclusive right to determine the source or sources of all applicants for employment and shall be the sole judge of their qualifications.

2. Each new employee, upon entering the service of the Company, shall be required to turn his union authorization and membership card over to the steward of his department for investigation.

Section 4—Check-off:

The following provision shall be incorporated into the Agreement between the parties:

A. In order to secure the increased production which will result from greater harmony between workers and employers and in the interest of increased cooperation between Union and Management which cannot exist without a stable and responsible Union, the parties hereto agree as follows:

V. The Union shall immediately furnish the Com-

pany with a list of its members in good standing the date of ..... The Company shall deduct from the first pay of each month the Union dues for that month of all members whose names appear on the notarized list, and who have not, within fifteen days after the date of ....., advised the Company and the Union, in writing, that they do not wish their dues deducted. Also, the Company shall deduct, for all employees who become members of the Union after the date of this agreement, from the first pay of each month the Union dues for that month. The Company shall promptly remit the dues to the Financial Secretary of the Union. The initiation fee, reinstatement fee, assessment, or other monies due the Union shall be deducted in the same manner as dues collections.

C. In order to enable the Company to comply with the foregoing provisions, the list of members in good standing of the Union to be furnished to the Company in accordance with the above paragraph shall show the name and, insofar as the information shall be available to the Union, the check number of each such member. Thereafter, on or before the last pay of each month, the Union shall submit to the Company a list showing the name of each employee who shall have become a member in good standing of the Union since the last previous list of members of the Union in good standing was furnished the Company and showing: (1) the amount of any initiation fee or re-instatement fee to be deducted from the wages of such employee for the succeeding month; (2) the first

month (which shall not be earlier than the month in which the list was submitted) in which Union dues are to be deducted from the wages of such employee in accordance with paragraph G. above. The Union shall also furnish to the Company a certificate of its President or other qualified officer showing the name and address of the Financial Secretary of the Union to whom the amounts so deducted are to be remitted.

D. The Union shall indemnify and save the Company harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken or not taken by the Company in reliance upon certified lists furnished to the Company by the Union or for the purpose of complying with any of the provisions of this Section.

#### OR-1c-HW

#### Section ....—Hours of Work:

(a) The normal hours of work shall be eight (8) per day and forty (40) per week. The daily hours of work shall be consecutive except for such rest periods as may be provided in accordance with the practice established in the Company as mutually agreed to.

(b) The normal work day will be any regularly scheduled consecutive 24-hour period and will be computed from the time the employee starts work. A normal work week will be a calendar week beginning at 12:01 a.m. Monday or at the turn changing hour nearest to that time. The basis of rest in any twenty-four (24) hour period will be the



sixteen (16) hours following the regular eight (8) hours of work. Meal period excepted. The basis of rest in any week shall be all time in excess of forty (40) straight time hours in the calendar week.

(c) The five (5) straight time days of work shall be consecutive.

(d) Changes in the starting time of all shifts shall be made only after the Company has consulted with the Union's Labor Relations Committee.

(e) Overtime payments shall be made on the basis of either daily or weekly overtime hours worked but an employee shall not be paid both daily and weekly overtime for the same overtime hours worked. Hours worked in excess of eight (8) working hours in any one day and forty (40) per week in any one week shall be paid for at the overtime rate of one and one-half times the regular rate. Notwithstanding the provisions above an employee working before or after the regular shift periods shall be paid overtime at the rate of one and one-half times the regular rate. Employees required to work on Saturday shall be paid at the overtime rate of one and one-half times the regular rate. Employees required to work on Sundays shall be paid overtime at twice the regular rate.

(f) Employees who are regularly scheduled or who are notified to report and who do report for work, shall be paid, in the event no work for which they were scheduled is available, for four (4) hours work at their regular rate of pay. Employees who are scheduled and report and actually begin work at the start of a shift and work less than four (4)

hours, shall be paid for a minimum of four (4) hours at their regular rate of pay. Employees who actually begin work on the second part of the shift shall receive eight (8) hours' pay provided they worked the first part of the day. At Management's discretion the employees scheduled or notified to report may be assigned to other substantially similar work for which they may be qualified in lieu of their being released. Should employees refuse such assignment, they shall not receive the four hours reporting pay.

When an employee is called to the plant for work in an emergency during his regular scheduled time off, he shall be guaranteed a minimum of four (4) hours' work or pay in lieu thereof at his overtime rate of pay.

(g) In the event that: Strikes, work stoppages in connection with labor disputes, breakdowns of equipment, or failure of utilities or acts of God, interfere with work being provided, or an employee is not put to work or is laid off after having been put to work, either at his own request or due to his own fault, the provisions of paragraph (f) section ..., do not apply. Also these provisions shall not apply in the event Management gives such reasonable notices as determined by Management of a change in schedule or reporting time and that the employee scheduled or notified to report for work need not report.

(h) In the event that: Strikes, work stoppages in connection with labor disputes, breakdowns of equipment, or failure of utilities or acts of God

interfere with work being provided, or an employee is not put to work or is laid off after having been put to work, either at his own request or due to his own fault, the provisions of above paragraph (t), do not apply. Also these provisions shall not apply in the event Management gives such reasonable notices, as determined by Management and the plant Grievance Committee, of a change in schedule or reporting time and that the employee scheduled or notified to report for work need not report.

Section ....—Wages:

A. Continuation of Wage Rates:

Hourly, incentive and piece-work rates in effect as of the date of this Agreement shall remain in effect for the duration of this Agreement except as changes may be permissible and accomplished under Paragraph B of this Section.

B. Rate Establishment and Adjustment:

It is recognized that changing conditions and circumstances may from time to time require the installation of new wage rates, adjustment of existing wage rates or modification of wage rate plans because of the creation of new jobs, development of new manufacturing processes, changes in equipment, changes in the content of jobs, or improvements brought about by the Company in the interest of improved methods and product. Under such circumstances the following procedure shall apply.

I. New Wage Rates for New Jobs.

When a bona fide new job or position is to be established:

- a. Management will develop an appropriate hourly, incentive or piece-work rate.
- b. The proposed rate will be explained to the grievance committee with the objective of obtaining its agreement to the installation of the proposed rate, or, to the installation of the proposed rate for an agreed upon period which will serve as a trial period. Management may thereupon install such rate. If the rate is installed without agreement, it shall subsequently be subject to adjustment as provided below:
- c. When a wage rate for a new job is installed, the employee or employees affected may, at any time within ninety (90) days, (except where the parties otherwise mutually agree) file a grievance alleging that such new rate does not bear a fair relationship to other jobs in the same plant. Such grievance shall be adjusted under the grievance and arbitration machinery of this Agreement. If the grievance be submitted to the arbitration machinery, the decision shall be effective as of the date when the employee was assigned to the new job.

## II. New Wage Rates for Changed Jobs.

When changes are made in equipment, method of processing, material processed, or quality or production standards which would result in a substantial change in job duties or requirements; or where over a period of time an accumulation of minor changes of this type have occurred which, in total, have resulted in a substantial change in job duties or

requirements, adjustments of hourly, incentive, piece-work and tonnage rates, may be required. In such cases new wage rates shall be installed in the following manner:

- a. Management will follow the procedure outlined in I-a above. In addition, the rate proposal so developed will be fully explained to the Union representatives with the objective of obtaining their agreement to the proposal on the basis of equity. Negotiations may be instituted by the grievance committeeman representing affected employees or by Management. If subsequent rate studies are necessary, Management will acquaint the grievance committeeman or committee regarding such study and seek their cooperation. When the study has been completed and the proposed new wage rates computed, Management representatives will again confer with the committeeman or committee and fully explain the study. The procedure involved in explanation and negotiations will be that procedure outlined in Grievance Section..... of this Agreement with negotiations continuing through the successive steps of such procedure.
- b. If Management and the Union representatives are unable to agree upon the new rate for the changed job, Management shall have the alternative of (1) establishing the new rate; (2) setting a temporary rate for a reasonable trial period. If Management elects to set the new rate for the changed job, the employee may file

a grievance at any time within ninety (90) days (except where the parties otherwise mutually agree) from the installation of the new rate, and any change in the rate so determined shall be retroactive to the date of the assignment of the employee to the changed job. If Management adopts the alternative of a trial period, the employee, during such trial period, shall be guaranteed his straight-time average hourly earnings for the three months immediately preceding the change in the job content. After the expiration of the trial period, the employee or employees affected may, at any time within thirty (30) days, file a grievance and any change in the rate so determined shall be retroactive to a date no earlier than the date of the assignment of the employee to the changed job but no later than the date immediately following the expiration of the trial period. Such grievance shall be adjusted under the grievance and arbitration machinery of this Agreement.

If any grievance under this paragraph b is submitted to the arbitration machinery, the decision shall be governed by the principle that the new rate shall be in line with other rates in the plant.

The details of applying this provision to cases in which an employee has worked at more than one job during the three months and to other exceptional situations shall be left to negotiations between the grievance committee

and Management. The grievance committee and Management may agree to the computation of guaranteed earnings on a group or departmental rather than an individual basis.

OR-2-W

Section ....—Wages:

All wage increases shall be effective as of August 18, 1945. All employees covered by this Agreement shall receive a 25c per hour increase for each hour worked under this Agreement. There shall be an increase of 25c per hour in all hourly rates for each occupational classification, and an equivalent increase in all piecework rates or incentive bonus rates which will result in an increase of 25c per hour. It is understood and agreed that in applying the above increase to pieceworkers the incentive workers, the present incentive or piecework rates shall remain in effect and said employees shall have added to their daily incentive or piecework average straight time hourly earnings, 25c per hour for each straight time hour worked. Hourly, incentive, or piece rates now in effect and as increased above shall remain in effect for the duration of this Agreement, except as changed in accordance with the provisions of said Agreement.

OR-1-NSB

Section ....—Night Shift Bonus:

Effective on ....., 194...., all employees for hours worked during the second shift shall receive a premium rate, in addition to their standard rate, of ten (10) cents per hour, and for hours worked

during the third shift a premium rate, in addition to the standard rate, of fifteen (15) cents per hour, where such hours are to be paid for on the basis of time and one-half or double time, the premium rate for the second or third shift shall be included in the rate of pay on the basis of which the time and one-half or double time shall be computed.

OR-1-HP

Section ....—Holidays:

The following days shall be considered holidays:

New Year's Day	Labor Day
Decoration Day	Thanksgiving Day
Independence Day	Christmas Day

All employees required to work on the above holidays shall be paid at twice their regular rate of pay.

In the event of a holiday shut down all employees shall be guaranteed a minimum of eight (8) hours pay at their regular rate of pay for such holiday.

When a recognized holiday falls on Sunday, and Monday is the day commonly observed for such holiday, such Monday shall be considered as the holiday and shall be paid for as such.

OR-1a-S

Section ....—Seniority:

A. Seniority is defined as the length of an employees' service with the Company and it shall apply as to lay-off and rehiring throughout the plant of the Company.

B. It is understood and agreed that in all cases of promotion and demotion and increase or decrease of forces; the following factors shall govern: Seni-



ority shall prevail provided the employee is able to capably perform the work. In determining capability, training, skill, efficiency and experience shall be considered.

C. All new employees hired hereafter shall work thirty (30) calendar days before being placed on the seniority list.

D. Workers shall be given preference to work on either day or night shift in accordance with their Seniority status.

E. The employees seniority list shall give employees name, original hiring date, and all the occupations the employee has had experience on with the Company. Such seniority list shall be given by the Company to the Union once every six months.

Accumulated seniority shall be lost upon:

1. Justifiable discharge
2. Voluntary quitting
3. After having been laid off, the employee does not return to work within five (5) working days after date of mailing by registered mail written notice of recall to employment to the address appearing on the Company's records. The Company shall furnish the Union secretary a copy of the letter sent the employee at the same time the employee is notified to return to work.

Seniority can only be retained during this period by the employees notifying the Company each ninety (90) days that he is available for employment.

F. In the case of a decrease of forces, Local

Union officers and Grievance Committeemen shall be given preferential seniority providing they are capable of doing the available work.

OR-1-V

Section ....—Vacations:

a. Each employee who, from the date of hire, has been continuously in the employ of the Company for one (1) year or more shall receive two (2) weeks' vacation with pay.

b. Continuous service shall be determined by the employee's first employment in the plant of the Company and in accordance with the provisions for determination of continuous service as set forth in the Seniority section of this Agreement.

c. It is agreed that the intent of this Section is to provide vacations to eligible employees who have been consistently employed. Consistent employment shall be construed to mean the receipt of earnings in a minimum of 60% of the pay periods within the employees qualifying year.

d. Two (2) weeks vacation shall consist of fourteen (14) consecutive days; provided, however, that in the event the orderly operations of the plant require, the two (2) week's vacation may, by mutual agreement between the Company and the Union be taken in two (2) periods of seven (7) consecutive days each.

e. Each employee granted a vacation shall be paid at the employee's straight time average rate of earnings per hour for the first two (2) of the three (3) closed and calculated pay periods immediately preceding the employee's actual vacation period.

Hours of pay for each vacation week will be the average hours per week worked by the employee during the three month preceding the actual vacation period, but not less than forty (40) hours a week or the scheduled average work week of the plant, during the three months period preceding the vacation.

f. Promptly after January 1 of each calendar year each employee shall be requested to specify the vacation period he desires. Vacations will, so far as possible, be granted at times most desired by employees (longer service employees being given preference as to choice), but the final right to change such allotments, is exclusively reserved to the Company in order to insure the orderly operation of the plant.

g. If an employee is eligible for vacation as provided for in this Section and the employee's service is terminated by the Company for any reason prior to his vacation period, said employee shall receive at time of termination of service the actual amount of vacation pay due him as provided for in this Section.

Section ....—Grievance Procedure:

Should differences arise between the Company and the Union as to the meaning and application of this Agreement, or should any trouble of any kind arise in the plant there shall be no suspension of work of any kind on account hereof but the same shall be settled as promptly as possible in the following manner:

1. Between the aggrieved employee accompanied

by a member or members of the Grievance Committee designated by the Union and the foreman of the Department. The foreman shall give his answer to the grievance within forty-eight (48) hours.

2. Between members of the Grievance Committee, designated by the Union and the General Superintendent or Manager of the Plant. Matters to be so adjudicated, must be presented in writing by the aggrieved party, who may also be called upon for verbal testimony regarding the Grievance.
3. Between the Representatives of the International Organization of the Union, the Grievance Committee and Representatives of the Executives of the Company. Third Step meetings shall be held within ten (10) days after disagreement on the disposition of Grievance in the Second Step.

In the event of disagreement on an unsettled Grievance in Step 3, such grievance shall be sent to arbitration (in accordance with the arbitration provision of this agreement) within 10 days following receipt of either part from the other of a request that the grievance be arbitrated.

When grievances are not disposed of within the prescribed time in any step, unless an extension of time has been mutually agreed upon, they may be appealed to the next step.

Any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance

committee. The same right shall be accorded by the Management, to the Representative of the Union.

Step 4. If not then settled, the grievance shall be appealed to an impartial umpire, provided it is the type of case in which the umpire is authorized to rule. The umpire shall be appointed by two representatives of the Company and two representatives of the Union. The decision of the umpire shall be final, conclusive, and binding on both the parties. The expense incident to the service of the umpire shall be shared equally between the Company and the Union.

It shall be the functions of the umpire, within ten (10) days after submission of the case to him, to make a decision of all claims of discrimination for Union activity and membership and in all cases of alleged violation of the terms of this contract. The umpire shall have no power to add to or subtract from or modify any of the terms of this Agreement and any agreements made supplementary hereto. But shall refer any such case back to the parties without any such decision. If the representatives of the Company and the Union are unable to agree on an umpire, as provided above, either the Company or the Union will request the United States Department of Labor, Division of Conciliation, for the appointment of an Umpire. Powers of the decision, of the Umpire, so appointed, shall extend only and be binding upon both the Company and the Union on the same basis as the umpire decision as provided for above.

## Section ....—Grievance Record:

Grievances not adjusted by Step I shall be reduced to writing on forms provided by the Company (which shall be supplied with these forms by the Union) dated and signed by a member of the Union, and two copies given to the Foreman. The foreman will have inserted in the appropriate place on the form, his disposition of the matter, and will sign and date same, returning one (1) copy to the Grievance Committee or Committeeman within three (3) days. Such Grievances not settled in Step I (above) shall be discussed promptly at a mutually satisfactory time, but not later than the first succeeding regular meeting which shall be held not less than twice each month at the option of the Union, between the designated representative of Management and the Committee of the plant.

Grievances to be discussed at such regular monthly meeting shall be entered on agenda form by the Grievance Committee and the Management three (3) days before such meeting.

Union Grievances to be discussed at regular monthly meetings may be fully investigated by a member of the Grievance Committee who shall be afforded such time off, as may be necessary for purposes of such complete investigation of the Grievance which time off shall occur between the date of filing of the Grievance in Step I hereof, and the discussion at the meeting herein referred to. Minutes of all Step II Grievance meetings, shall be prepared by the Representative of the Management jointly signed by the Chairman of the Committee or the

Secretary of the Grievance Committee and the Representatives of Management and two (2) copies of such minutes shall be typed and be handed to the Union Chairman not later than ten (10) days following the date on which the meeting was held. The minutes shall conform essentially to the following outline:

- a. Date and place of meeting.
- b. Name and position of those present and those absent.
- c. Identifying number and descriptions of each grievance discussed,
- d. Brief statement of Union position.
- e. Brief statement of Company position,
- f. Abstract of important aspects of the discussion,
- g. Decision reached,
- h. Statement of concurrences in or, exceptions taken to decision,
- i. Statement as to whether decision accepted or rejected.

#### OR-1-DC

#### Section ....—Discharge Cases:

In the exercise of its rights and functions, Management agrees that a member of the Union shall not be peremptorily discharged from and after date hereof, but that in all instances in which Management may conclude that an employee's conduct may justify suspension, such suspension shall not be more than five (5) calendar days.

During this period of initial suspension, the employee may, if he believes that he has been

unjustly dealt with, request hearing and a statement of the offense before the foreman, or the Manager of the Plant with a member or members of the Grievance Committee present as the employee may choose.

At such hearings the facts concerning the case shall be made available to both parties. After such hearing, Management may determine whether the suspension shall be converted into discharge dependent on the facts of the case, or that such suspension may be extended or revoked. If the suspension shall be revoked, the employee shall be returned to employment and receive full compensation at his regular rate of pay for time lost, but in the event a disposition shall result in either the affirmation, or extension of the suspension or discharge of the employee, the employee may, within five (5) days after such disposition, allege a grievance which shall be handled with the procedure for adjustment of grievances starting with Step 2. Final decision on all suspension or discharge cases shall be made by the Company within five days from the date of filing of the grievance, if any. Should it be determined by the Company, or by an umpire, in accordance with the grievance procedure that the employee has been suspended unjustly, the Company shall reinstate the employee and pay full compensation at the employee's regular rate of pay for time lost. Exceptions may be made where lesser settlement is mutually agreed to by the Company and the Union or awarded by the umpire upon the merits of the case.



Section ....—Recall to Employment:

Employees who have been temporarily laid off due to lack of work, shall furnish the Company with their proper mailing addresses and telephone numbers, if any, or with such telephone numbers, if any, where or at which they can be reached.

It is further agreed that all employees will at all times keep the Company advised with the information listed in the above paragraph.

The Company agrees to follow the following procedure in recalling an employee to work: Telephone or telegraph the employee at the telephone number or address furnished. If the employee or some person at his address is not reached in this matter, the Company will post a registered letter to his last known address. If the employee fails to report for work, or notify the Company of his intentions within five (5) days from the posting date of said registered letter, the Company shall have the right to assume that the employee has voluntarily quit and shall be relieved of all further responsibility.

The Company shall present the Union with a copy of all registered letters recalling employees at the time such letters are sent.

OR-1-V

Section ....—Benefits and Privileges:

Employees receiving benefits, condition or privileges above the minimum provided for herein shall not have the same reduced by reason of the signing of this Agreement but shall continue to enjoy same.

## Section ....—Leave of Absence:

Upon request, an employee may be granted a leave of absence, but in no case shall same be issued for more than six (6) months, without an extension agreement between the employee and the Management and the Union.

No employee shall accept other employment during the leave of absence period without the consent of the Company and the Union, except as specified below.

Those employees only on leave of absence who fail to report for work on or before the date of expiration shall forfeit their seniority rights and will be taken off the seniority list.

If sickness or accident prevents an employee from reporting he may retain his seniority by notifying the Company.

Leaves of absence extending for more than two (2) weeks must be given in writing.

## Leave for Union Officers and Delegates:

Any employee selected by the Union as a delegate of a convention, conference, or for other official Union business shall be given the necessary leave of absence and without pay.

Any local Union officer who is an employee of the Company shall be given, upon his request, a leave of absence not to exceed a period of two years for the purpose of working for that such leave of absence shall not constitute any break in the employee's record of continuous service and the period of leave of absence shall be included in such record of continuous service.

OR-1-VET

Section ....—Veterans:

Any veteran of the recent war who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the merchant marine of the United States, and who is hired by this Company after he is relieved from training and service in the land or naval forces or at the completion of service in the merchant marine, shall, upon having been employed for the probationary period provided for all new employees in this Agreement, and not before, receive seniority credit for the period of such service subsequent to September 1, 1940, provided:

- (1) Such veteran shall apply for and obtain such employment within ..... months from the time he is relieved from such training and service in the land or naval forces or the time of his completion of his service in the merchant marine, it being agreed that if such veteran is unable to work by reason of physical disability during said period of ..... months, his application may be made within ninety (90) days from the time his disability has ended.
- (2) Such veteran shall not have previously exercised this right in this or any other plant of the Company.
- (3) Such veteran shall not be employed for the purpose of bringing about the displacement of another worker.

- (4) A veteran so employed shall submit his service discharge papers to the Company at the end of the aforesaid probationary period of employment and the Company shall place thereon in permanent form a statement showing that the veteran has exercised this right, such statement to be signed by representatives of the Company and the Union.

Veteran's Committee:

A Veterans' Committee, consisting of equal representatives of the Company and the Union shall be set up in each plant. All problems relating to veterans that are not disposed of under the terms of this contract shall be presented to the veterans' committee. Under sponsorship of the veterans' committee, the Company shall undertake a training program for disabled veterans so as to place them in jobs that are agreeable to the veterans.

An employee veteran, when reinstated, shall be entitled to his former rate of pay with accrued adjustments that would have been his had he continued in employment.

OR-1-ML

Section ....—Military Leave:

(1) Right to Position: Any employee or former employee who subsequent to May 1, 1940, shall have entered upon or may hereafter enter upon active military or naval service in the land or naval forces of the United States (including reserve components thereof) or, before the termination of the unlimited National emergency declared by the President on

May 27, 1941, service in the United States Merchant Marine and who in order to perform such service has left or leaves a position other than a temporary position, in the employ of the Company and who,

- (a) Receives a certificate of satisfactory completion of his military or naval training and service or a certificate of completion of a period of substantially continuous service in the merchant marine:
- (b) is still qualified to perform the duties of such position: and
- (c) makes application for reemployment within ninety (90) days after he is relieved from such training and/or service or from hospitalization continuing after discharge from military service for a period of not more than one year,

shall be restored to such position or a position of like seniority, status and pay, unless the Company's circumstances have so changed as to make it impossible or unreasonable to do so.

#### Section ....—Safety and Health:

The Company shall continue to make reasonable provision for the Safety and Health of it's employees during the hours of their employment. Protective devices, goggles, gloves, fire and waterproof clothes, and other articles necessary to properly safeguard the health of employees and protect employees from injury shall be provided by the Company. Proper heating and ventilating systems shall be installed by the Company where needed.

A Safety Committee shall be formed consisting

of three (3) employees covered by this Agreement selected by the employees and three (3) Company Representatives. This Committee shall meet at least once every month. Time spent by such Committee in excess of four (4) hours in any month must be approved by the Company. Recommendations of this Committee shall be acted upon. In cases of disagreement, said cases shall be subject to the established grievance procedure. All safety and health rules established by this Committee shall be observed by all employees.

#### OR-1-BB

##### Section ....—Miscellaneous:

The Company shall grant the Union the right to place Bulletin Boards in an agreed place in the plant covered by this Agreement, for the purpose of posting copies of this Agreement, official papers and notices of Union meetings.

Written communications pertaining to the activities of the Union may be distributed by the Union in the shop by placing such communications in a box supplied by the Company for that purpose, located near the gate.

##### A. Contracting of Work in Plant

The employees covered by this Agreement shall be given preference for any work performed in or about the plants.

##### B. Working Foremen.

The Company agrees that it will not allow Management representatives, foremen with the right to hire or fire, or any other person

excluded by this Agreement, to do any physical labor that will take any work away from the regular employees, unless it be for reasons beyond the control of the Company.

OR-1-T

Section ....—Amendment or Termination:

The terms and conditions of this Agreement shall continue in effect until ....., and shall continue in effect thereafter until changed or terminated as follows:

- (a) Either party may at any time after ....., 194...., and from time to time thereafter, give thirty (30) days written notice to the other party of the time for the commencement of a conference of the parties for the purpose of negotiating the terms and conditions of a change of this Agreement, and
- (b) If, because of failure to agree, this Agreement is not changed by a written Agreement entered into by the Company and the Union within thirty (30) days from the giving of said notice, then this Agreement and all of the provisions thereof, may be terminated by either party as follows: Either party may serve on the other party a specific notice of termination of this Agreement. This Agreement shall then be terminated upon the expiration of thirty (30) days from the giving of said termination notice.
- (c) Either party hereto may, however, at any time but not more often than once every six

(6) months, reopen this Agreement for the purpose of negotiating a change in the wage schedule upon the service of written notice thirty (30) days previous to commencement of negotiations.

Notice hereunder shall be given by registered mail, be completed by and at the time of mailing, and if by the Company be addressed to the United Steelworkers of America, 4110 East Slauson Avenue, Maywood, California, and if by the Union, be addressed to the Company at ..... Either party may, by like written notice change the address of which registered mail notice to it shall be given.

#### Section ....—Sick Leave

Each employee who, as of this date of this Agreement and of each subsequent calendar year during the life of this contract, has been continuously in the employ of the Company for one but less than three (3) years shall be entitled during such calendar year to seven (7) days of sick leave with pay, and every employee who has been continuously in the employ of the Company for three (3) or more years shall be entitled to fourteen (14) days of sick leave with pay. Before any employee shall be entitled to the benefits of sick leave he shall present a certificate signed by doctor stating facts of his illness.

The determination of the length of continuous employment and the rate of pay applicable for each employee shall be made in accordance with the provisions of this contract covering Vacations.



Section. .—Group Insurance:

The Company shall institute and maintain uniform group insurance plans, the master policies issued by the insurance companies to be attached and made part of the collective bargaining contracts, providing the following benefits.

- (a) Life, accidental death and dismemberment insurance in a face amount equal to 75 per cent of average annual earnings, with a minimum coverage of \$1,500.
- (b) Disability insurance with benefits of 25 per cent of weekly average earnings payable for 13 weeks for each disability.
- (c) Hospitalization and surgical benefits covering workers and dependents for 21 days at \$6 per day each disability, hospital facilities to the extent of \$50 and surgical costs to the extent of \$150.

The plan shall be operated under joint union-management administration. Provisions shall be made for continued insurance of employees during periods of layoff unless employment is secured elsewhere. More advantageous terms in any existing plan shall not be reduced.

[Endorsed]: Filed March 18, 1946.

## BOARD'S EXHIBIT No. 12-A

Name	Classification
Aguna, Phillip (b)	Spot Welder
Ahlf, Harold (b)	Maintenance Mechanic
Alatorre, Joe (b)	Assembler
Aldridge, Frank (b)	Molder
Allen, John (b)	Stock Room
Angona, Agnes (b)	Core Filer
Angona, Elmer (b)	Molder
Aparato, Joseph (b)	Material Handler
Arent, Lester (b)	Repair & Inspection
Arlotti, Joe (b)	Machinist
Armendariz, Guillermo (b)	Assembler
Armijo, Jose (b)	Power Press Operator
Avenatti, Dominick (b)	Tool & Die Maker
Avila, Jose (b)	Dipper
Bachman, Fred (b)	Tool Crib Attendant
Baker, Gustave (b)	Carpenter
Balthazar, William (b)	Janitor
Baltierra, Mauro (b)	Dipper
Barbosa, Fausto (b)	Sprayer
Barbosa, Frank (b)	Sheetmetal Worker
Barton, Lanson (b)	Machinist
Bennett, Howard (b)	Material Checker
Bennett, William (b)	Unit Repairman
Bent, George (b)	Core Baker
Beronda, Ross (b)	Outside Range Service
Billy, Owen (b)	General Helper
Blaser, Frank	Machinist
Blevins, Francis (b)	Molder
Boase, Samuel (b)	Outside Service
Bonura, Tony (b)	Assembler
Bowell, Calvin (b)	Crater - Carpenter
Boyd, Harold (b)	Floor Man
Bratley, Theodore (b)	Outside Service
Bria, Jimmie (b)	Machinist "B"
Bryant, Jesse (b)	Stock Room
Burrola, Joseph (b)	Machinist
Bury, Ralph (b)	Sheetmetal Patternmaker
Bush, O'Neal T. (b)	Dipper
Busse, Carl (b)	Electrician

Name	Classification
Candelaria, Marcos (b)	Painter
Cano, Jesus (b)	Turret Lathe Operator
Carlsen, Otto B. (b)	Tool & Die Maker
Carrasco, Joseph (b)	Power Press Operator
<del>Carrillo, Robert</del>	Arc Welder
Carroll, Henry (b)	Tool & Die Maker
Carroll, Moses B. (b)	Shear Operator
Castron, Jules (b)	Dipper
Castron, Peter (b)	Enamel
Cazares, Andres (b)	Carpenter, Crater
Chance, Verne (b)	Unit Repairman
Chittock, Reuben	General Conversion Work
Christensen, Martin (b)	Outside Service
Chulich, Steve (b) .	Janitor
Clark, Wallace (b)	Sheetmetal Wkr. Hlpr.
Clements, Van (b)	Molder
Conrad, Harry (b)	General Meehanic
Cooper, Harry (b)	Tool & Die Maker
Coring, Otsie (b)	Lot Labor
Corrales, Bernadino (b)	Foundry Helper
Crews, Ralph (b)	Molder
Crittendon, Gerald (b)	Material Handler
Cruz, Vicente (b)	Molder
Cuccia, Joe (b)	Material Handler
Cuccia, Liborio (b)	General Conversion Work
Cueto, Pete	Electrician
Cummings, Charles	Maintenance
Cunningham, Hubert 9 [ch]	Assembler
Dalby, Stewart (b)	Helper, Carpenter
Daly, Milton	Engine Lathe Operator
Davis, Preston (b)	Conveyor Loader
Davis, Will (b)	General Conversion Work
Dawson, Harold (b)	General Conversion Work
DeGruccio, Lewis (b)	Molder
De Hart, John (b)	General Conversion Work
Depetro, Ross (b)	Assembler
De Rose, Joseph (b)	General Conversion Work
Diller, Isak (b)	Janitor
Dominquez, Manuel (b)	Power Press Operator
Doren, Arthur (b)	Carpenter

Name	Classification
Doyle, Frank (b)	Parts Stock Room
Drisker, Sam (b)	Cupola Loader
Dufau, Angel (b)	General Conversion Work
Dunn, Fred (b)	Spot Welder
Dunn, Leon (b)	Carpenter
Dyer, Nina (b)	Coremaker
Edwards, Dell G. (b)	Carpenter
Elias, Joe (b)	Power Press Operator
Elizalde, Pete (b)	Shake out & Sandcutter
Elizalde, Rosalio (b)	Janitor
Emard, Leo (b)	Material Handler
Enger, Frank 9 (b)	Crater Carpenter
Erickson, Lynas (b)	Crater Carpenter
Estrada, Justo (b)	Power Press Operator
Estrada, Virginia (b)	Coremaker
Ewert, John (b)	Tool & Die Maker
Fairchild, Mel (b)	General Conversion Work
Falzone, Joseph (b)	Lot Laborer
Fata, Charles (b)	Grinder
Feola, Ralph (b)	General Conversion Work
Ferrendeli, Victor (b)	Tool & Die Maker
Finner, Reinhold (b)	Foundry Laborer
Fitz, Roy (b)	Carpenter
Flores, Felix (b)	Lot Laborer
Floyd, Laverne (b)	Sheetmetal Patternmaker
Fost, Gilbert (b)	Assembler
Foster, Lambert (b)	Carpenter
Franco, Francisco (b)	Core Room Helper
Fraser, Howard (b)	Machinist
Fugarino, Henry (b)	General Helper
Fuller, Graydon (b)	Outside Service
Gabalton, Juan (b)	Cupola Loader
Galewick, Vincent (b)	Unit Repairman
Galvin, Arthur (b)	Pickler
Gandara, Pietro (b)	Grindo
Garcia, Guadalupe (b)	Braker Operator
Garcia, Santiago	Drill Press Operator
Garcia, Ysabel	General Conversion Work
Gardea, James (b)	Crane & Shear Operator

Name	Classification
Garland, Enoch (b)	Outside Service
Gattoni, Charles (b)	Are Welder
Gattoni, William (b)	Are Welder
Gaudio, Cecilia	Core Filer
Ghiotto, Henry (b)	Carpenter
Gomez, Jose (b)	Lot Laborer
Gonzales, John (b)	Shear Operator
Gonzales, Joe (b)	Unit Repair Helper
<del>Gonzales, Santos</del>	Power Press Operator
Graham, Vester (b)	General Conversion Work
Granado, Lorenzo (b)	Material Handler
Grant, Patrick (b)	Carpenter
Gray, Frank (b)	Dipper
Gray, James (b)	Are Welder
Grego, Carl	Maintenance
Guardado, Ceserio (b)	Coremaker
Gutierrez, George (b)	General Conversion Work
Hainey, Glade (b)	General Conversion Work
Hale, Lorraine (b)	Core Filer
<del>Hart, Frank</del>	General Conversion Work
Hart, George (b)	Carpenter
Hatcher, Floyd (b)	General Conversion Work
Henry, Frank (b)	Dipper
Hentschel, Al (b)	Outside Service
Hernandez, Sylvestre8 (b)	Sandblaster
Hester, George (b)	Are Welder
Holguin, Manuel (b)	Drill Pr. Opr.
Holguin, Valentine (b)	Foundry Helper
Homotoff, Nick (b)	Cupola Tender
Hopper, Cecil (b)	General Conversion Work
Ibbs, Chester	Tool & Die Maker
Imboden, Malcolm (b)	Tool & Die Maker
Jackson, Bert	Janitor
Jacob, Leon (b)	Are Welder
Jager, Charles (b)	Machinist
James, Howard (b)	Carpenter Helper
Jenkins, Harold	Turret Lathe Operator
Johns, Leonard	Machinist
Johnson, John (b)	Grinder

Name	Classification
Jordan, Raymond (b)	Shear Opr.
Juarez, Salvadore (b)	Wheelabrator Opr.
Kaplan, Morris (b)	Material Handler
Kapy, Edward (b)	Outside Service
Karrasch, Carl	Sheetmetal Worker Helper
Keemer, Oseas (b)	Electrician
Kelly, Castor (b)	Carpenter Crater
Kelly, Harold (b)	Unit Repairman
Kidd, Ray (b)	Painter
Kieffer, Paul (b)	Outside Service
Kline, Joseph (b)	Sheetmetal Patternmaker
Kramer, William (b)	Carpenter

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(b) Checked with blue mark.

[Endorsed]: Filed March 21, 1946.

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### BOARD'S EXHIBIT No. 12-B

Name	Classification
Labry, Ercelle (r)	Spot Welder
Lahey, Bruce (r)	Millman
Langos, Edward (r)	Tool & Die Maker
Lara, Gilberto (r)	Shaker out & Sandcutter
Larker, Basil (r)	Carpenter
Latona, Mike* (r)	
Lawson, James (r)	Molder
Leonard, Deward (r)	General Conversion Work
Letsch, Adolph (r)	General Conversion Work
Lightford, Earl (r)	Carpenter
Livingston, Arthur (r)	Carpenter
Lockhart, Frank (r)	Millwright
Lopez, Maximo (r)	Power Press Operator
Lopez, Pete (r)	Drill Press Operator
Loquet, Edward (r)	General Conversion Work
Lorsch, Allen (r)	Die Setter
Lovell, William (r)	Grinder
Lucado, Raymond	General Conversion Work
Lugo, Florencio (r)	Tool & Die Maker
<del>Lunsford, James W.</del>	General Conversion Work

Name	Classification
Malone, Mizel (r)	Grinder
Marquez, John (r)	Drill Press Operator
Martin, Tony (r)	Stock Room
Martinez, Eulalio (r)	Drill Press Operator
Martinez, Pedro (r)	Molder
Mass, Albert (r)	Electrician
Maxey, Delmar (r)	Molder
May, Fred S. (r)	General Conversion Work
Mecarte, Rowland (r)	General Conversion Work
Meli, Robert (r)	General Conversion Work
Mendoza, Richard (r)	General Conversion Work
Mercado, John (r)	Outside Service
Metoyer, Frank R. D., Jr. (r)	Material Handler
Metoyer, Raymond (r)	General Conversion Work
Metz, Joseph (r)	Tool & Die Maker
Mild, John (r)	Outside Service
Miles, Edgar (r)	General Conversion Work
Miller, Dale (r)	Carpenter - Crater
Moore, Augustus	Core Room Helper
Moore, John (r)	General Conversion Work
Morrison, Frank E. (r)	Sheetmetal Worker
Morton, Christian (r)	General Conversion Work
Mosley, William* (r)	
Moss, Brandon J. (r)	Outside Service
Muoio, Joseph (r)	Molder
Muthler, Aloysious (r)	Painter
McArthur, Charles (r)	General Conversion Work
McCampbell, Everett (r)	Arc Welder
McClellan, Frank (r)	Pickler
McCollum, Curtis (r)	Carpenter
McKean, Robert (r)	General Conversion Work
McMillan, Ira (r)	Crane Operator
McMillan, Mae (r)	Janitress
McNinch, Civilin (r)	Machinist
McWilliams, Daphine (r)	Coremaker
Nevarez, Richard (r)	Arc Welder
Ocampo, Alfonso, Jr. (r)	General Conversion Work
Ortega, Louis (r)	Arc Welder
Oshann, Eugene J. (r)	Carpenter, Crater

1700 *National Labor Relations Board vs.*

Name	Classification
Padilla, Felipe (r)	Coremaker
Pardo, Bennie (r)	Power Press Operator
Pardo, Charles (r)	Die Setter
Partipilo, Nicolantonio (r)	Power Press Operator
Patton, Irene (r)	Coremaker
Peguero, Alberto (r)	Shear Operator
Pena, Gregorio (r)	Power Press Operator
Perez, Medardo (r)	General Conversion Work
Perry, John (r)	General Conversion Work
Pitts, George (r)	Tool Grinder
Potekean, Shirley (r)	Coremaker
Prandini, Paul (r)	Oiler
Pritchard, Louis (r)	Unit Repairman
Puga, Edward (r)	Breaker Operator
Quintana, John	General Conversion Work
Raabe, George (r)	Casting Inspector
Radogna, Louis (r)	General Conversion Work
Radogna, Nick (r)	General Conversion Work
Raga, John	Die Setter
Ramirez, Joe (r)	Molder
Ramirez, Rafael (r)	Janitor
Ramos, Frank (r)	Power Press Operator
Rand, Charles (r)	Carpenter
Ray, Elizabeth (r)	Coremaker
Ream, Leon (r)	Painter
Regalado, Benny (r)	General Conversion Work
Regalado, Fabian (r)	Janitor
Rendon, Jose	Coremaker Helper
Reyes, Robert (r)	Electrician
Riboli, Giovanni (r)	Power Press Operator
Ricard, William (r)	General Conversion Work
Rice, Flaud (r)	Millwright
Rico, Raul	Shear Operator
Rios, Leonard (r)	Spot Welder
Roberts, Aloysius (r)	General Conversion Work
Robledo, Rogelio (r)	Shear Helper
Robles, Edward (r)	General Conversion Work
Robles, Joe (r)	Unit Repairman Helper
Rodriguez, Joe (r)	Power Press Operator
Rohe, Edwin (r)	Janitor



Name	Classification
<del>Rolling, Frankie</del>	Coremaker
Romano, Joseph (r)	General Conversion Work
Romero, Louis (r)	Power Press Operator
Roque, Lee (r)	General Conversion Work
Rosales, Simon (r)	Coremaker
Rosas, Tony (r)	Machinist
Rosen, Charles (r)	Janitor
Royere, Pierre H. (r)	Arc Welder
Ruiz, Castulo (r)	Sheetmetal Worker
Ruiz, Felix (r)	Arc Welder
Ruiz, Jose (r)	Laborer
Rymer, Marina (r )	Coremaker
Salazar, Alfred (r)	Molder
Salerno, Frank	General Conversion Work
Sanchez, Joseph (r)	Power Press Operator
Santos, Philip (r)	Shear Operator
Scavo, August (r)	General Conversion Work
Scavo, Joe	Sheetmetal Worker
Sciortino, William (r)	Coremaker
Serar, Rudolph (r)	General Conversion Work
Serna, Enrique	General Conversion Work
Sers, Joseph (r)	General Conversion Work
Silva, Frank	General Conversion Work
Silva, Louie (r)	Drill Press Operator
Simard, John (r)	Molder
Smith, Albert (r)	Power Press Operator
Smith, Roosevelt (r)	Janitor
<del>Sobzak, Fred</del>	Carpenter
Solorsano, John (r)	General Conversion Work
Spallino, Charles (r)	General Conversion Work
Spallino, Tony (r)	General Conversion Work
Stalsworth, Jack (r)	Maintenance Mechanic
St. Clair, Clarence (r)	Unit Repairman
Stell, Cal (r)	Molder
Stiles, Max E. (r)	Unit Repairman
Sulli, John (r)	General Conversion Work
Terrazas, Joe (r)	Laborer
Telesio, Eugene (r)	Molder
Thomas, Tony (r)	General Conversion Work
Thomas, Vincent (r)	General Conversion Work

1702 *National Labor Relations Board vs.*

Name	Classification
Thomason, Earvin (r)	General Conversion Work
Torres, Apolinar	Grinder
Traslavina, Jose (r)	Power Press Operator
Trayer, Charles (r)	Maintenance Machinist
Trenholm, Max (r)	Machinist
Troost, Carl (r)	Sheetmetal Worker
Trujillo, Lucas—ch*	
Usher, Ernest	Outside Service
Usher, Earl (r)	Outside Service
Vaicaro, Dominic	Tool & Die Maker
Vaicaro, Frank (r)	Drill Press Operator
Valdez, Francisco (r)	Oiler
Van Noate, George (r)	Outside Service
Vasquez, Apolinar (r)	Foundry Helper
Vega, Jimmy (r)	Carpenter's Helper
Vega, Victor (r)	Power Press Operator
Vidas, Frank (r)	Carpenter's Helper
Vigil, Augustine (r)	Molder
Vigna, Joe (r)	General Conversion Work
Wackeen, John G. (r)	Sheetmetal Patternmaker
Wackeen, Walter	General Conversion Work
Walblom, Carl (r)	Electrician
Waterfield, Curtis (r)	Molder
White, Stephen (r)	General Conversion Work
Williams, Annison (r)	Millwright Helper
Williams, John (r)	Janitor
<del>Wilson, Dale</del>	Electrician Helper
Wood, William F. (r)	Janitor
Woods, George (r)	Janitor
<del>Worrall, Ernest</del>	General Reconversion Work
[formerly a pattern maker helper]*	
Wuopio, Walfred (r )	Power Press Operator
Zacarias, Peter (r)	Welder's Helper
Zamora, Adolfo (b)	Core Oven Tender
Zoldack, Andrew (r)	Unit Repairman
On Payroll of Service Inc.:	
Leonard, Len C.	Truck Driver Helper
Seavo, Frank—ch (r)	Truck Driver [Service Inc.]*
Muckridge, Shelly	Truck Driver
Sweeton, Clyde—ch (r)	Truck Driver

Name	Classification
Vick, Jimmie M.—ch	Floorman
Cerda, Joe C.	Truck Driver
Ray H. Steen—ch (r)	Material Handler
John Kettle	Truck Driver

[In Red Pencil] on challenge.

\*Written in pencil.

(r) Checked with red mark.

[Endorsed]: Filed March 21, 1946.

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BOARD'S EXHIBIT NO. 14  
CERTIFICATE OF BUSINESS  
FICTITIOUS FIRM NAME

The undersigned do hereby certify that they are conducting a manufacturing business at 1221 Los Palos Street, Los Angeles, California, under the fictitious firm name of Pioneer Electric Co., and that said firm is composed of the following persons, whose names in full and places of residence are as follows, to-wit:

Robert J. Merritt, 111 N. Las Palmas Avenue, Los Angeles.

Willis J. Boyle, 511 N. Muirfield Road, Los Angeles.

Louis M. Boyle, 155 S. Hudson Avenue, Los Angeles.

Witness our hands this 15th day of August, 1942.

/s/ ROBERT J. MERRITT

/s/ WILLIS J. BOYLE

/s/ LOUIS M. BOYLE

State of California,  
County of Los Angeles—ss.

On this 15th day of August, 1942, before me, Cecil W. Collins, Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Robert J. Merritt, Willis J. Boyle and Louis M. Boyle, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same. In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]        /s/ CECIL W. COLLINS  
Notary Public in and for said County and State.  
My Commission expires September 18, 1946.

[Endorsed]: Filed Oct. 15, 1942.

#### AFFIDAVIT OF PUBLICATION

Los Angeles Enterprise  
131 North Broadway, MUtual 4212  
Date of First Publication, October 16, 1942.  
Certificate of Business  
Pioneer Electric Co.

State of California,  
County of Los Angeles—ss.

M. Pedicini, of the County of Los Angeles, State of California, being duly sworn, makes oath and says:

That I am and at all times herein mentioned was a citizen of the United States of America, over

the age of eighteen years and not a party to nor interested in the above entitled matter; that I am the principal clerk of the printer and publisher of Los Angeles Enterprise, a newspaper of general circulation, printed and published weekly in said County and which newspaper is published for the dissemination of local news and intelligence of a general character, and which newspaper at all times herein mentioned had and still has a bona fide subscription list of paying subscribers, and which newspaper has been established, printed and published in the said County of Los Angeles for a period exceeding one year; that the notice, of which the annexed is a printed copy, has been published in the regular and entire issue of said newspaper, and not in any supplement thereof, on the following days, to wit: Oct. 16, 23, 30, and Nov. 6, 1942.

/s/ M. PEDICINI

Subscribed and sworn to before me this 6 day of November, 1942.

[Seal]      /s/ WM. R. LATTA,  
Notary Public in and for said County and State.

Copy of Notice  
Certificate of Business  
Fictitious Firm Name

The undersigned do hereby certify that they are conducting a manufacturing business at 1221 Los Palos Street, Los Angeles, California, under the fictitious firm name of Pioneer Electric Co., and that said firm is composed of the following persons, whose names in full and places of residence are as follows, to-wit:

Robert J. Merritt, 111 N. Las Palmas Avenue,  
Los Angeles.

Willis J. Boyle, 511 N. Muirfield Road, Los An-  
geles.

Louis M. Boyle, 155 S. Hudson Avenue, Los An-  
geles.

Witness our hands this 15th day of August, 1942.

ROBERT J. MERRITT  
WILLIS J. BOYLE  
LOUIS M. BOYLE

State of California,  
County of Los Angeles—ss.

On this 15th day of August, 1942, before me, Cecil W. Collins, Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Robert J. Merritt, Willis J. Boyle and Louis M. Boyle, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]      /s/ CEIL W. COLLINS,  
Notary Public in and for said County and State.  
My Commission expires September 18, 1946.

Date of 1st publication Oct. 16, 1942.

(15996-11-6)

[Endorsed]: Filed Nov. 6, 1942.

Certificate of Business  
Fictitious Firm Name

The undersigned do hereby certify that they are conducting a manufacturing business at 1221 Los Palos Street, Los Angeles, California, under the fictitious firm name of Pioneer Electric Co., and that said firm is composed of the following persons, whose names in full and places of residence are as follows, to-wit:

Robert J. Merritt, 111 N. Las Palmas Avenue, Los Angeles, California.

Robert J. Merritt, Jr., 111 N. Las Palmas Avenue, Los Angeles, California.

Willis J. Boyle, 511 N. Muirfield Road, Los Angeles, California.

Louis M. Boyle, 155 S. Hudson Avenue, Los Angeles, California.

Witness our hands this 1st day of Jan., 1944.

/s/ ROBERT J. MERRITT

/s/ ROBERT J. MERRITT, JR.

/s/ WILLIS J. BOYLE

/s/ LOUIS M. BOYLE

State of California,  
County of Los Angeles—ss.

On this 1st day of Jan., 1944, before me, Cecil W. Collins, Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Robert J. Merritt, Robert J. Merritt, Jr., Willis J. Boyle and Louis M. Boyle, known to me to be the persons

whose names are subscribed to the within instrument, and acknowledged to me that they executed the same. In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]      /s/ CECIL W. COLLINS,  
Notary Public in and for said County and State.

My Commission expires September 18, 1946.

[Endorsed]:    Filed Jan. 28, 1944.

Affidavit of Publication

Los Angeles Enterprise

131 North Broadway    MUtual 4212

Date of first publication February 4, 1944

CERTIFICATE FOR TRANSACTION OF  
BUSINESS UNDER FICTITIOUS NAME  
PIONEER ELECTRIC CO.

State of California,  
County of Los Angeles—ss.

H. J. Scarlett of the County of Los Angeles, State of California, being duly sworn, makes oath and says:

That I am and at all times herein mentioned was a citizen of the United States of America, over the age of eighteen years and not a party to nor interested in the above entitled matter; that I am the principal clerk of the printer and publisher of Los Angeles Enterprise, a newspaper of general circulation, printed and published weekly in said County and which newspaper is published for the dissemination of local news and intelligence of a general



character, and which newspaper at all times herein mentioned had and still has a bona-fide subscription list of paying subscribers, and which newspaper has been established, printed and published in the said County of Los Angeles for a period exceeding one year; that the notice, of which the annexed is a printed copy, has been published in the regular and entire issue of said newspaper, and not in any supplement thereof, on the following days, to wit: February 4, 11, 18, 25, 1944.

/s/ H. J. SCARLETT.

Subscribed and sworn to before me this 25 day of February, 1944.

[Seal]

M. PEDICINI,

Notary Public in and for Said  
County and State.

Certificate for Tranaction of Business Under  
Fictitious Name

The undersigned do hereby certify that they are conducting a manufacturing business at 1221 Los Palos Street, Los Angeles, California, under the fictitious firm name of Pioneer Electric Co., and that said firm is composed of the following persons, whose names in full and places of residence are as follows, to-wit:

Robert J. Merritt Jr., 111 N. Lts Palmas Ave.,  
L. A., Calif.

Robert J. Merritt, 111 No. Las Palmas Ave.,  
L. A., Calif.

Willis J. Boyle, 511 N. Muirfield Road, L. A.,  
Calif.

Louis M. Boyle, 155 S. Hudson Avenue, L. A.  
Calif.

Witness our hand this 1st day of Jan., 1944.

ROBERT J. MERRITT

ROBERT J. MERRITT JR.

WILLIS J. BOYLE

LOUIS M. BOYLE

State of California,  
County of Los Angeles—ss.

On this 1 day of Jan. A.D. 1944, before me, a  
Notary Public in and for said County and State,  
residing therein, duly commissioned and sworn, per-  
sonally appeared Robert J. Merritt, Robert J. Mer-  
ritt, Jr., Willis J. Boyle, Louis M. Boyle, known to  
me to be the persons whose names subscribed to the  
within instrument, and acknowledged to me that  
they executed the same.

In Witness Whereof, I have hereunto set my  
hand and affixed my official seal the day and year  
in this certificate first above written.

[Seal]

CECIL W. COLLINS,

Notary Public in and for Said  
County and State.

My commission expires Sept. 18, 1946.

Filed Jan. 28, 1944.

J. F. MORONEY,

County Clerk.

By H. E. STEVENS,

Deputy.

Date of 1st publication Feb. 4, 1944.

(20215-2-25)

[Endorsed]: Filed Feb. 24, 1944.

Certificate of Business  
Fictitious Firm Name

The Undersigned do hereby certify that they are conducting a manufacturing business, with the principal office for the transaction of the business at 3700 East Olympic Boulevard, Los Angeles, California, under the fictitious firm name of Pioneer Electric Company, and that said firm is composed of the following persons, whose names in full and places of residence are as follows, to-wit:

W. G. Durant, 1245 Wentworth, Pasadena, California.

R. J. Merritt, 111 N. Las Palmas Avenue, Los Angeles, California.

R. J. Merritt, Jr., 111 N. Las Palmas Avenue, Los Angeles, California.

Louis M. Boyle, Ojai, California.

Marion Jenks, 511 N. Muirfield Road, Los Angeles, California.

W. J. O'Keefe, 845 S. Keniston, Los Angeles, California.

L. J. Mitchell, 1117 Story Place, Alhambra, California.

Witness our hands this 23rd day of November, 1945.

PIONEER ELECTRIC  
COMPANY.

W. G. Durant

R. J. Merritt

R. J. Merritt Jr.

Louis M. Boyle

Marion Jenks  
W. J. O'Keefe  
L. J. Mitchell

By /s/ W. G. DURANT.

State of California,  
County of Los Angeles—ss.

On this 23rd day of November, 1945, before me, Cecil W. Collins, Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared W. G. Durant, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

/s/ CECIL W. COLLINS.

My commission expires September 18, 1946.

[Endorsed]: Filed Nov. 28, 1945. J. F. Moroney, County Clerk. By M. E. Morin, Deputy.

Filed by Daily Journal

Affidavit of Publication of  
The Los Angeles Daily Journal  
and The Los Angeles News  
121 North Broadway      MUtual 6354  
Los Angeles 12, California

Dec. 20, 1945.

State of California,  
County of Los Angeles—ss.

M. B. Kelley of the County of Los Angeles, State

of California, being duly sworn, makes oath and says:

That I am and at all times herein mentioned was a citizen of the United States of America, over the age of eighteen years and not a party to nor interested in the above entitled matter; that I am the principal clerk of the printer and publisher of The Los Angeles Daily Journal and The Los Angeles News, that said newspaper is a newspaper of general circulation printed and published daily, except Sundays, in the City and County of Los Angeles; that the Certificate of Business Fictitious Firm Name of which the annexed is a true printed copy was published in said newspaper on the following days:

November 29, December 6, 13, 20, all in the year 1945.

/s/ M. B. KELLEY.

Subscribed and sworn to before me, this 20th day of December, 1945.

/s/ ALICE A. HILL

Notary Public in and for said County and State.

Certificate of Business Fictitious  
Firm Name

The Undersigned do hereby certify that they are conducting a manufacturing business, with the principal office for the transaction of the business at 3700 East Olympic Boulevard, Los Angeles, California, under the fictitious firm name of Pioneer Electric Company, and that said firm is composed

of the following persons, whose names in full and places of residence are as follows, to wit:

W. G. Durant, 1245 Wentworth, Pasadena, California;

R. J. Merritt, 111 N. Las Palmas Avenue, Los Angeles, California;

R. J. Merritt, Jr., 111 N. Las Palmas Avenue, Los Angeles, California;

Louis M. Boyle, Ojai, California;

Marion Jenks, 511 N. Muirfield Road, Los Angeles, California;

W. J. O'Keefe, 845 S. Keniston, Los Angeles, California;

L. J. Mitchell, 1117 Story Place, Alhambra, California.

Witness our hands this 23rd day of November, 1945.

PIONEER ELECTRIC  
COMPANY,

W. G. Durant

R. J. Merritt

R. J. Merritt, Jr.

Louis M. Boyle

Marion Jenks

W. J. O'Keefe

L. J. Mitchell

By /s/ W. G. DURANT.

State of California,  
County of Los Angeles—ss.

On this 23rd day of November, 1945, before me, Cecil W. Collins, Notary Public in and for the said

County and State, residing therein, duly commissioned and sworn, personally appeared W. G. Durant, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]                      CECIL W. COLLINS,  
Notary Public in and for said  
County and State.

My commission expires September 18, 1946.

Filed November 28, 1945.

J. F. MORONEY,  
County Clerk,  
By M. E. MORIN,  
Deputy.

(33832 Thurs) Nov. 29 Dec. 20

Reprint L. A. Daily Journal—MU. 6354.

[Endorsed]: Filed Dec. 20, 1945.

No. 87750

State of California,  
County of Los Angeles—ss.

I, J. F. Moroney, County Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original

Certificate of Business Fictitious Firm Name of Pioneer Electric Co. (filed Oct. 15, 1942) and Affidavit of Publication of said Certificate;

Certificate of Business Fictitious Firm Name of Pioneer Electric Co. (filed Jan. 28, 1944) and Affidavit of Publication of said Certificate and

Certificate of Business Fictitious Firm Name of Pioneer Electric Company (filed Nov 28, 1945) and Affidavit of Publication of said Certificate.

on file and/or of record in my office, and that I have carefully compared the same with the originals.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 15th day of February, 1946.

[Seal]                      J. F. MORONEY,  
   County Clerk.  
By F. R. MILLER,  
   Deputy.

[Endorsed]: Filed March 20, 1946.

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BOARD'S EXHIBIT No. 20

[Letterhead] O'Keefe & Merritt Co.  
August 20, 1942.

Pioneer Electric Co.  
1221 Los Palos  
Los Angeles, Calif.  
Gentlemen:

In accordance with our conversation with you relative to subcontracting the electrical work on M5 generator units, we are giving you orders for this work priced at what these cost us from other



sources, without taking the time to break down and analyze costs, and inasmuch as the quantity is larger than the previous order and due to the fact that we are renting you part of our building, thereby eliminating delivery and many other expenses, we feel that there should be considerable saving.

It is therefore understood and agreed that you will in no case charge us more than 10% above your cost, and if there is any saving over this amount, there will be an adjustment in price and any amounts collected in the meantime will be refunded to us.

It is further understood and agreed that should your cost show less than 10% profit or even a loss, there will be no upward adjustment in price.

Very truly yours,

**O'KEEFE & MERRITT CO.**

**DPO:R**

Accepted Aug. 20th, 1942.

**PIONEER ELECTRIC CO.,**

By /s/ **W. J. BOYLE.**

[Endorsed]: Filed March 21, 1946.

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**BOARD'S EXHIBIT No. 21**

State of California, Office of the Secretary of State  
I, Frank M. Jordan, Secretary of State of the  
State of California, hereby certify:

That I have compared the annexed transcript  
with the Record on file in my office, of which it

purports to be a copy, and that the same is a full, true and correct copy thereof.

In Witness Whereof, I hereunto set my hand and affix the Great Seal of the State of California this 15th day of March, 1946.

[Seal]      /s/ FRANK M. JORDAN,

Secretary of State.

By /s/ CHAS. J. HAGERTY,

Deputy.

ARTICLES OF INCORPORATION OF  
O'KEEFE & MERRITT COMPANY

Know All Men by These Presents:

That we, the undersigned, a majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together and do hereby so associate ourselves together for the purpose of forming a Corporation under the laws of the State of California, and do hereby declare:

I.

That the name of said Corporation shall be O'Keefe & Merritt Company.

II.

That the purposes for which this Corporation is formed are as follows: To manufacture, buy and sell all kinds of sheet metal products, appliances and implements, and all kinds of patents covering the same, and to erect and own all buildings necessary to contain factories or iron works for carrying on such manufacturing business, and to trans-

act all other such business as is necessary in the prosecution of the sheet metal industry; to own, acquire, lease, hold, sell and convey all kind of real and personal property; to borrow money when necessary for the proper conduct of said business; to buy, sell, acquire, deal in and hypothecate the shares of stock of other incorporated companies; to buy and to own and operate stores for dealing in said sheet metal products, if necessary; and generally to conduct any business of aforesaid as any private individual may do, either in California, or in any other State or Territory in the United States, or in any foreign country.

III.

That the place where the principal business of said corporation is to be transacted is the City of Los Angeles, County of Los Angeles, State of California.

IV.

That the term for which the said corporation is to exist is fifty (50) years from the date of its incorporation.

V.

That the board of directors or trustees of the said corporation shall be five (5) and the names and residences of such Directors or Trustees who are appointed for the first year, and to serve until the First Annual Election, and the qualification of other such officers are as follows, to wit:

D. P. O'Keefe, 625 S. Workman St., Los Angeles, Calif.

R. J. Merritt, 975 S. Vermont Ave., Los Angeles, Calif.

Mrs. Lucille Merritt, 975 S. Vermont Ave., Los Angeles, Calif.

W. J. Boyle, 1657 Orange St., Los Angeles, Calif.

W. J. Boyle, Jr., 1603 Gardner St., Los Angeles, Calif.

VI.

That the amount of the authorized capital stock of said Corporation is one hundrd and fifty thousand dollars (\$150,000.00), and the number of shares into which the said capital stock is divided is fifteen hundred shares (1500) of the par value of one hundred dollars (\$100.00) each.

VII.

That the amount of the capital stock of this corporation actually subscribed is sixty thousand dollars (\$60,000.00), and that the names of the persons by whom the same has been subscribed with the amount of their subscription set opposite their respective names are as follows:

Name of Subscriber	Number of Shares	Amount
D. P. O'Keefe.....	200	\$20000.00
R. J. Merritt.....	199	19900.00
Mrs. Lucille Merritt.....	1	100.00
W. J. Boyle, Sr.....	199	19900.00
W. J. Boyle, Jr.....	1	100.00
Total .....	600	\$60000.00

In Witness Whereof, we have hereunto set our hands this eighteenth day of June, A.D. 1920.

/s/ D. P. O'KEEFE

/s/ R. J. MERRITT

/s/ MRS. LUCILLE MERRITT

/s/ W. J. BOYLE

/s/ W. J. BOYLE, JR.

State of California,  
County of Los Angeles—ss.

On this eighteenth day of June, in the year one thousand nine hundred and twenty, before me, Frank W. L. James, a Notary Public in and for said county, residing therein, duly commissioned and sworn, personally appeared W. J. Boyle and W. J. Boyle, Jr., personally known to me to be the persons whose names are subscribed to the within instrument, and they each duly acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the County of Los Angeles, the day and year in this certificate first above written.

[Seal] /s/ FRANK W. L. JAMES,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Oct. 4, 1922.

State of California,  
County of Los Angeles—ss.

On this 19th day of June, in the year one thousand nine hundred and twenty, before me, Frank

**1722**     *National Labor Relations Board vs.*

W. L. James, a Notary Public in and for said county, residing therein, duly commissioned and sworn, personally appeared D. P. O'Keefe, R. J. Merritt, and Mrs. Lucille Merritt, personally known to me to be the persons whose names are subscribed to the within instrument, and they each duly acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the County of Los Angeles, the day and year in this certificate first above written.

[Seal]     /s/ FRANK W. L. JAMES,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Oct. 4, 1922.

No. 22813

State of California,  
County of Los Angeles—ss.

I, L. E. Lampton, County Clerk and ex-officio Clerk of the Superior Court, do hereby certify the foregoing to be a full, true and correct copy of the original Articles of Incorporation of O'Keefe & Merritt Company on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 19 day of June, 1920.

[Seal]             L. E. LAMPSON,  
County Clerk.

By /s/ G. S. CLARKE,  
Deputy Clerk.

[Endorsed]: Filed March 21, 1946.

BOARD'S EXHIBIT No. 26  
AGREEMENT

This Agreement made and entered into effect the 2nd day of January, 1946, by and between the Pioneer Electric Company, hereinafter referred to as the Company, and the signatory Unions hereto; Stove Mounters International Union of North America, Local 125; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Union No. 389; International Moulders and Foundry Workers, Local 374; District Lodge No. 94 for and in behalf of its affiliate Local 311 International Association of Machinists; Los Angeles County District Council of Carpenters and its affiliate locals; Refrigeration Fitters United Association Local 508 and Painters, Decorators and Paperhangers of America Local 792, hereinafter referred to as the Unions.

Witnesseth:

That Whereas the Company and the Union have a common interest in the furtherance of the business of the Company; and

Whereas a harmonious relationship and economic peace and stability are recognized by the parties hereto as being necessary to improve and maintain proper relations between the Company, the employees thereof, the Union and the public; and

Whereas all of the parties hereto and the public will benefit by continuous economic peace and by the adjustment at the conference table and through the medium of arbitration of any differences between the parties hereto; and

Whereas it is the desire of all parties hereto to further all of the aforementioned ends in entering into this agreement;

Now, Therefore, it is mutually understood and agreed by and between the parties hereto as follows:

### Article I

1. The Company hereby recognizes the Union as the exclusive collective bargaining representative with respect to pay, wages, hours of employment and other conditions of employment, for all employees in the classifications listed herein on Exhibit A, which is attached hereto and made a part of this agreement. All employees thus listed shall within 15 days become and remain members of the Union listed in Exhibit A as representing such employees, and shall thereafter remain members of said union in good standing, as a condition of employment.

### Article II

In the event any legislation be enacted by the Congress of the United States, as to change in the maximum hours worked per week, the contract shall be open for discussion of the readjustment of wages.

### Article III

1. There shall be no stoppage of work because of a strike or lockout by the Union or its members during the life of this agreement. All disputes between any Union and/or its members and the Company to be handled as stated in Article IV, Paragraph 2, of this agreement. The findings and awards of the Arbitrator to be mutually binding.

2. There shall be no lockout on the part of the Company during the life of this Agreement.



Article IV

1a. The Union shall appoint a Shop Committee, and shall notify the Company in writing, promptly upon the signing of this Agreement, the names of the duly elected members of the said Shop Committee. The Union shall also give prompt written notice to the Company for any change in the membership of the Committee.

b. It shall be the duty of the Shop Committee (a) to take up with the Company all matters under the jurisdiction of the Union and covered by this Agreement, and (b) to see that all Union members employed are in good standing in the Union and obey its rules.

c. The Company shall not discriminate against any member of the Union for serving as a member of the Shop Committee, or as an officer of the Union, or for his lawful acts in the fulfillment of the duties hereinabove set forth. Such duties shall, however, be performed as far as the Committee deems possible, with a view not to interfere with normal routine work either of members of the Shop Committee or of other employees of the Company.

2. All grievances which may arise among any of the employees covered by this Agreement shall be handled as follows:

A. When an employee has a grievance, he shall contact his Shop Steward and they shall take it up with his Foreman;

B. When the grievance cannot be thus settled, it shall be taken up by the Shop Committee with the Plant Superintendent;

C. If an adjustment cannot be made between the Shop Committee and the Plant Superintendent, the grievance shall then be taken up by the Shop Committee with the Company, whose representative shall be Cecil W. Collins or his nominee.

D. If the grievance cannot be adjusted, it shall then be taken up with the Company by a Business Representative of the Union.

E. In the event of any dispute between the Company and the Union as to the meaning or interpretation of any provision of this Agreement, or in the event of any alleged grievance, the parties hereto shall exercise every amicable means to settle or adjust such disputes or grievances; but in the event of the failure to accomplish the settlement or adjustment thereof, such disputes or grievances shall be referred to a Board of three Arbitrators and their majority decision shall be binding upon the parties involved. The Board of Arbitration shall consist of one representative to be selected by the Company and one representative to be selected by the Union. The representative so selected shall meet within three (3) days of their appointment and select a third member of the Board, who, when so selected, will act as Chairman. Upon failure of the representatives so selected to agree upon the Chairman within a further three-day period both parties agree that the American Arbitration Association shall be called upon to select a Chairman within ten (10) days. The Board when selected shall meet within a further five-day period at which time both parties will present their cases, and unless

a mutual agreement as to extension of time shall be agreed upon by both parties, it will be mandatory upon the Board to render its findings and decision within five (5) days after conclusion of hearings.

If it shall be determined that any employee or employees have been unjustly laid off or discharged by the Company, they shall be reinstated without discrimination and with pay retroactive to the date of such lay-off or discharge. Either party may elect to use the courts in lieu of arbitration.

Article V.

1. Seniority shall prevail in each classification group. In the event it becomes necessary to reduce the working force in any classification, the last employee hired in said classification shall be the first laid off, and in re-hiring of laid-off employees, it shall be in the reverse, the last man laid off shall be the first to be re-hired, providing the employee is capable of doing the work.

2. Upon application, leaves of absence may be granted to employees without the loss of seniority at the discretion of the Company. If an employee voluntarily leaves the Company's employ, or is discharged, or exceeds the leave of absence granted by the Company; such employee shall lose his or her seniority; likewise, any employee who fails to report back to work within three (3) days after he or she is notified to return to work, shall lose his or her seniority unless such employee proves failure to report was unavoidable.

3. Notwithstanding anything herein set forth, the Company reserves the right to advance any indi-

vidual employee within a department, from one department to another, or to foremanship.

4. The Company will give the Shop Committee, upon request, data taken from the files of the Company specifying the length of service of the employees. This data is intended for use in determining the seniority status of the employees.

5. Employees who have been laid off shall maintain past seniority and shall accumulate additional seniority up to ninety (90) days after such lay-off.

#### Article VI

1. When necessary for the Company to reduce working hours of any classification, the Company will first lay off employees in that classification of less than three months' seniority, and shall then reduce the schedule of hours in the classification to not less than thirty-five (35) hours per week before laying off other employees. However, to enable the Company to give service to its customers, one man in each classification shall be allowed at all times to work forty (40) hours in any work week, such man to be chosen by the plant Superintendent.

#### Article VII

a. All employees covered by this agreement shall be entitled to one (1) week vacation with pay after one (1) year of continuous service, to be taken at regular vacation time, and one (1) week's pay at Christmas time. After five (5) years of continuous service, one (1) week vacation with pay, to be taken at regular vacation time, and three (3) weeks' pay at Christmas time. For the purpose of

this Section, one week's pay shall be computed by multiplying straight time hourly rate or pay by the number of hours in the regularly scheduled work week.

b. Vacation schedule shall be made by the Company, provided that whenever choice of time by an employee is practicable, senior employees shall be given first choice.

c. For the purpose of determining eligibility for a vacation with pay, vacation rights shall be terminated if an employee is discharged or quits his employment.

### Article VIII

A set of working rules follows, and they shall be a part of this Agreement:

#### Working Hours

Rule 1: (a) Eight hours shall be a day's work, at any time designated by the Company, between 7:00 o'clock a.m. and 6:00 o'clock p.m. The Company shall have the right to designate different periods of work between such hours for the various departments in the Company and/or for any employee or employees in any such department or departments. This may be changed by mutual consent. Lunch periods shall be thirty (30) minutes and there be no split shifts. Forty (40) hours shall be a week's work. No one to work more than eight (8) hours in any twenty-four (24) hour period for straight or regular time.

(b) The regular twenty-four (24) hour period to be determined by the regular starting time of the shift upon which an employee is employed.

(c) Three shifts in a twenty-four (24) hour period may be established if necessary. The second shift will receive eight (8) hours' pay for seven and one-half ( $7\frac{1}{2}$ ) hours' work, with additional bonus of six (6 cents) per hour. The third shift shall receive eight (8) hours' pay for seven (7) hours' work, with additional bonus of six cents (6c) per hour.

Rule 2: (a) The normal work week shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, inclusive, except those employees whose work requires their work week starting on a day other than Monday. In this case the sixth day including the start day shall be considered Saturday and the following day Sunday for pay purposes. Work performed on Saturday shall be paid for at time and one-half. Work performed on Sunday and the following holidays shall be paid at double time: New Year's Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day. If a holiday falls on a Sunday, the following day shall be considered a holiday.

(b) No work shall be permitted on Labor Day, except for the preservation of life or property.

(c) It is hereby agreed that allowance of an overtime premium on any hour excludes that hour from consideration for overtime payment on any other basis, it being the intention of the parties hereto to thus eliminate any duplicate overtime payments.

Rule 3: Any employee called to work will be allowed four (4) hours' work or four (4) hours'

pay at straight time rates, and if more than four (4) hours is worked, he or she shall be paid for eight (8) hours' work. An employee is deemed called to work unless notified at the expiration of the previous shift not to report for work.

Rule 4: If an employee is temporarily assigned to a job carrying a lower rate pay he shall retain his regular rate. If an employee is temporarily assigned to a job calling for a higher rate of pay, he shall receive the higher rate while so assigned.

Rule 5: No employee shall suffer a reduction in the rate of pay or loss of privileges because of the signing of this Agreement.

Rule 6: Two ten-minute rest periods in any eight (8) hour shift shall be allowed all employees coming under this agreement.

#### Article IX

1. The wage rates for employees employed in the aforementioned classifications shall during the life of this Agreement be as set forth in Exhibits attached hereto and by this reference made a part of this Agreement as though set out in full at this point.

The employer agrees that all construction, erection, alteration, modification, demolition, addition of improvement in whole or in part of any building, structure or any other facilities in connection with the operation of the plant, to be performed by the employer direct or by contractor or sub-contractor, that the wages and classification of the Southern California Labor Agreement, known as the A.C.C. agreement as predetermined by the De-

partment of Labor under the Davis-Bacon Act shall be paid.

3. Any construction, alteration or repairs which are let out to contract shall be let to a contractor signatory to an agreement with the Los Angeles Building and Construction Trades Council.

#### Article X

This Contract shall be binding upon the parties hereto, and successors and assigns. It shall not be affected whatsoever by consolidation, merger, sale, transfer, leasing or assignment of either party; or changed in any respect by any change of any kind in the legal status or ownership in the plant, or any part thereof.

#### Article XI

This Agreement shall remain effect until December 31, 1946, and shall remain in effect from year to year thereafter, unless either party serves written notice on the other party of their desire to amend this Agreement, which notice shall be served on the other party at least ninety (90) days prior to the termination date.

In witness whereof, the parties hereto being duly authorized to execute same, have executed this Agreement as of the day and year first hereinabove set forth.

INTERNATIONAL ASSOCIATION OF  
MACHINISTS, DISTRICT LODGE, No. 94,

/s/ STANLEY STEARNS  
By /s/ GERALD GORDON



INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL 389,

By /s/ R. G. LAURENCE

PAINTERS, DECORATORS, AND PAPER-  
HANGERS OF AMERICA, LOCAL 792,

By /s/ C. C. COLLINS

STOVE MOUNTERS INT. UNION OF NORTH  
AMERICA, LOCAL 125,

By /s/ JOHN D. ROBERTS

INTERNATIONAL MOULDERS AND FOUN-  
DRY WORKERS, LOCAL 374,

By /s/ DREFER,

Secretary

By /s/ WM. A. LAZZARINI

LOS ANGELES COUNTY DISTRICT COUN-  
CIL OF CARPENTERS AND ITS AFFILI-  
ATE LOCALS,

By /s/ NICK CORDIL

“COMPANY”—

PIONEER ELECTRIC COMPANY,

By /s/ W. D. DURANT,

Partner.

EXHIBIT A

Stove Mounters International Union of N. A.  
Local #125

Article No. 1

When a new stove is put in, it may be mounted day work by fitter, foreman or mounter until patterns are properly fitted, after which a piece work price at discretion of Company may be set. In case the Union Committee and the Company cannot agree upon the price, a temporary price set by the Company shall be accepted for a period of one month, after which a final price shall be fixed and will be retroactive to the time of setting temporary price. All prices should be set by comparison with similar stoves in the shop. If no similar stoves in the shop, then by comparison with similar stoves in the district.

Article No. 2

All stoves and ranges to be finished complete, in case parts are short, a list of missing parts is to be given the foreman and when furnished before the day's work is finished, are to be mounted on range by Mounters. If day's work is finished before parts are furnished, mounter is to be paid day work for putting these parts on.

This article applies only to old-style mounting individually on the block and bench. Under the new system of mounting on the line, the Company agrees no short parts are to be put on the stove by the Mounter after it leaves the operation where the shortage occurs. Mounters shall not be responsible for enamel chipped or broken through no fault of

their own. The above Rule to apply to all Piece Work.

**Article No. 3**

So far as reasonably practicable, the Company will transfer employees, who otherwise would be laid off in accordance with seniority lists of their respective departments, to work in other departments.

Enamel Plant	
Brusher (Stenciler)	A..... \$1.00
Brusher (Stenciler)	B..... .90
Burner	A..... 1.20
Burner	B..... 1.10
Burner	C..... 1.00
Dipper	A..... 1.10
Dipper	B..... 1.05
Dipper	C..... .95
Handler	A..... .90
Inspector	A..... 1.15
Inspector	B..... 1.05
Millman	A..... 1.20
Millman	B..... 1.10
Pickler	A..... 1.10
Pickler	B..... 1.00
Sprayer	A..... 1.20
Sprayer	B..... 1.10
Sprayer	C..... 1.00
Wrapper	A..... .90
General Worker	..... .90
Stove Line	
Stove Assembler	A..... 1.20—1 year
Stove Assembler	B..... 1.10—6 months
Stove Assembler	C..... 1.00—3 months
Sub-Assembler	A..... 1.05—6 months
Sub-Assembler	B..... .90—3 months
General Worker	..... .90
Stock Clerk—	
Parts Handler	A..... 1.05
Parts Handler	B..... .95

Minimum hiring rate for 30-day qualification shall be 90c.

All Employees after one year to receive the A Rate.

Leadman or Working Foreman—To be paid 10c above the

## Sheet Metal Department

Die Setter	A———	\$1.25	
Die Setter	B.....	1.15	
Drill Press Opr.	A.....	1.10	
Drill Press Opr.	B.....	1.00	
Layout Press Opr.	A.....	1.35	
Layout Press Opr.	B.....	1.25	
Layout Press Opr.	C.....	1.15	
Power Brake Opr.	A.....	1.15	
Power Brake Opr.	B.....	1.10	
Power Brake Opr.	C.....	1.00	
Power Shear Opr.	A.....	1.20	
Power Shear Opr.	B.....	1.10	
Power Shear Opr.	C.....	1.00	
Punch Press Opr. (Large)	A.....	1.20	(Set own dies)
Punch Press Opr. (Large)	B.....	1.15	(Operator only)
Punch Press Opr. (Large)	C.....	1.05	(Helper)
Punch Press Opr.	A.....	1.15	
Punch Press Opr.	B.....	1.10	
Punch Press Op.	C.....	1.00	
Seam Welder	A.....	1.15	
Spot Welder	A.....	1.15	
Spot Welder	B.....	1.05	
Welder	A.....	1.25	(Combination)
Welder	B.....	1.15	(Arc or Acetylene Only)
Welder	C.....	1.05	

Minimum hiring rate for 30-day qualification shall be 90c.

All Employees after one year to receive the A Rate.

Leadman or Working Foreman—To be paid 10c above the highest rate paid any employee under his direction.

## Maintenance Department

Laborer .....	\$ .95
Maintenance Mechanic A.....	1.35
Maintenance Mechanic B.....	1.25
Maintenance Mechanic C.....	1.15
Maintenance Mechanic	
Helper .....	.95c to 1.05

SCHEDULE "A"  
Platers and Polishers

Apprentices	1st	2nd
1st 3 months.....	.90	.94
2nd 3 months.....		.98
3rd 3 months.....		1.02
4th 3 months.....		1.02
4th 3 months.....		1.06
5th 3 months.....		1.10
6th 3 months.....		1.14
7th 3 months.....		1.18
8th 3 months.....		1.22
9th 3 months.....		1.26
10th 3 months.....		1.30
11th 3 months.....		1.34
12th 3 months.....		1.38
Thereafter .....		1.40 per hour minimum

## Male Helpers—Starting Rate—Minimum 90 Cents Per Hour:

1st 3 months.....	.90
2nd 3 months.....	.95
3rd 3 months.....	1.00
4th 3 months.....	1.05
5th 3 months.....	1.10

## Feminine—Parts Wrappers:

1st 3 months.....	.80
2nd 3 months.....	.85
3rd 3 months.....	.90
1 Year .....	1.00

Automatic Polishing Machine Operator to be Classed same as Apprentice or Journeymen Polishers.

Wage Rates

Journeyman Molders .....	\$1.35 per hour
Cupola Tender .....	1.35 per hour
Sand Blasters or Millmen.....	1.20 per hour
Grinders .....	1.15 per hour
Nightmen and Shaker-Outs .....	1.15 per hour
Cupola Helpers .....	1.15 per hour
Foundry Helpers .....	1.10 per hour

Apprentice rates and schedules to be negotiated by the Company and the Union, and to be attached and become a part of the Agreement.

Women employed in the coreroom shall have a hiring rate of .90c per hour for the first thirty (30) days and thereafter shall receive \$1.00 per hour.

Machinist Minimum Wage Scales

Tool & Die Makers	A.....	\$1.65
Tool & Die Makers	B.....	1.50
Tool & Die Makers	C.....	1.35
Machinists	A.....	1.50
Machinists	B.....	1.40
Machinists	C.....	1.25
Tool Crib Attendant.....		1.10
Helper .....		1.00
Construction & Installation.....		1.75

[Endorsed]: Filed March 22, 1946.

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BOARD'S EXHIBIT No. 27  
ARTICLES OF COPARTNERSHIP

Articles of Copartnership, made and entered into this 15th day of August, 1942, between Robert J. Merritt, 111 N. Las Palmas Avenue, Los Angeles, California, Willis J. Boyle, 511 N. Muirfield Road, Los Angeles, California and Louis M. Boyle, 155 S. Hudson Avenue, Los Angeles, California:

Witnesseth, that said parties herein, having mutual confidence in each other, do hereby form with each other a partnership agreement on the terms and conditions following, that is to say:

First—The copartnership shall be for the carrying on of the manufacture of slip rings and commutators, and such other items as may be decided by the parties herein; for the fabricating of generator laminations; wiring and winding of part for generators; placing coils in stators and armatures; and such other work as may be decided by the parties herein. To commence on the 15th day of August, 1942, and to continue until terminated by the parties herein.

Second—Said copartnership shall be conducted and carried on under the firm name and style of Pioneer Electric Co., and the place of business shall be at 1221 Los Palos Street, Los Angeles, California, and/or at such other place or places as the partners shall hereafter determine.

Third—The capital of said copartnership shall consist of all the assets of any nature whatsoever and the income and profits arising from the employment thereof, with the exception of what each partner is entitled to draw out as hereinafter mentioned, shall become and constitute a permanent fund for copartnership purposes.

The working capital of the copartnership shall be contributed as follows: Forty per cent (40%) by Robert J. Merritt; Twenty five per cent (25%) by

Willis J. Boyle; and Thirty five per cent (35%) by Louis M. Boyle.

Fourth—Salaries: Robert J. Merritt, Willis J. Boyle and Louis M. Boyle shall be entitled to, and shall receive, a reasonable salary to be fixed by mutual consent and which shall be part of the operating expense of the business.

Fifth—The partners agree to devote their time, skill and energy to the best interest of the business of the copartnership during the continuance thereof.

Sixth—Profits and Losses: The profits arising out of the conduct of the business shall be divided between the partners in the same proportion as their contribution to capital, namely, forty per cent (40%) to Robert J. Merritt, twenty five per cent (25%) to Willis J. Boyle and thirty five per cent (35%) to Louis M. Boyle; and the losses shall be borne in the same proportion.

Seventh—Accounts and Books: Full, just, true and accurate accounts shall be kept of all matters relating to the business to be conducted by the partnership, and the books containing such accounts shall at all times be open to the inspection of all partners. Upon the request of any two partners, arrangements shall be made to have the books and accounts of the firm audited annually by an outside accountant.

Eighth—Inventory: On or near the first of each year, there shall be taken a full and complete inven-



tory of the business and the partners shall render each to the other a just and true account of all matters and things relating to said business at the time of taking of such inventory, and, thereupon the profits and losses, as the case may be, shall be ascertained and divided in the same proportion as their contribution to capital as shown in Article Third. If profits have been made, each partner shall be credited with his share thereof; and if losses have been sustained, each partner shall be charged with his share thereof.

Ninth—Liquidation in Event of Death: In the event of the death of any partner during the continuance of this agreement, then, and in such event, the interest of the partner so dying shall be determined, if such death occurs within three months of the taking of the preceding inventory, as of the date of such preceding inventory and as it then appeared; and, in the event of the death occurring within three months of the next succeeding inventory to be taken as above provided, then the interest of such deceased partner shall be determined from such inventory which shall be taken in the same manner as the inventories were customarily taken by the firm, except that all good outstanding accounts shall be valued at one hundred per cent (100%) of their gross amount and that an adjustment shall be made by an agreement as to the value of doubtful accounts.

Tenth—In the event of the death of any partner within three months of the taking of the next pre-

ceding inventory, his interest, determined as aforesaid from said inventory, shall be paid to his duly authorized legal representatives within thirty days after his death, as follows: One third in cash, one third by promissory note of the surviving partners, payable six months from said date, with interest at five per cent (5%) per annum, and the remaining one third by a further promissory note payable twelve months from said date, with like interest.

Eleventh—In the event of the death of any partner within three months prior to the date of taking the next succeeding inventory as herein provided, the interest of such deceased partner, to be determined by the next succeeding inventory, shall be paid to his duly authorized legal representatives thirty days after the date of the taking of such inventory, one third in cash and the remaining two thirds by two equal promissory notes, payable at the same periods and at the same rate of interest as hereinabove provided in the Tenth Article hereof.

Twelfth—In the event of the death of any partner, his salary shall cease from the date of his death, but his representatives shall be entitled to withdraw an amount equal to his salary from the firm until the settlement with such representatives as above provided, but this amount so drawn, from the date of his death until the date of the settlement, shall be charged against the share or portion in the business of such deceased partner.

In Witness Whereof, the parties to these presents

have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of:

/s/ ROBERT J. MERRITT

/s/ WILLIS J. BOYLE

/s/ LOUIS M. BOYLE

[Endorsed]: Filed March 22, 1946.

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BOARD'S EXHIBIT No. 28  
ARTICLES OF COPARTNERSHIP

Articles of Copartnership, made and entered into this 1st day of January, 1944, between Robert J. Merritt, 111 N. Las Palmas Avenue, Los Angeles, California, Robert J. Merritt Jr., 111 N. Las Palmas Avenue, Los Angeles, California, Willis J. Boyle, 511 N. Muirfield Road, Los Angeles, California and Louis M. Boyle, 155 S. Hudson Avenue, Los Angeles, California.

Witnesseth, that said parties herein, having mutual confidence in each other, do hereby form with each other a partnership agreement on the terms and conditions following, that is to say:

First—the copartnership shall be for the purpose of carrying on of the manufacture of slip rings and commutators and such other items as may be decided by the parties herein; for the fabricating of generator laminations; wiring and winding of parts for generators; placing coils in stators and armatures; and such other work as may be decided by the parties herein. To commence on the 1st day of January, 1944, and to continue until terminated by the parties herein.

Second—Said copartnership shall be conducted and carried on under the firm name and style of Pioneer Electric Co., and the place of business shall be at 1221 Los Palos Street, Los Angeles, California, and/or at such other place or places as the partners shall hereafter determine.

Third—The capital of said copartnership shall consist of all the assets of any nature whatsoever and the income and profits arising from the employment thereof, with the exception of what each partner is entitled to draw out as hereinafter mentioned, shall become and constitute a permanent fund for copartnership purposes.

The working capital of the copartnership shall be contributed as follows: Twenty five per cent (25%) by Robert J. Merritt; fifteen per cent (15%) by Robert J. Merritt, Jr., twenty five per cent (25%) by Willis J. Boyle; and Thirty five per cent (35%) by Louis M. Boyle.

Fourth—Salaries: Robert J. Merritt, Robert J. Merritt, Jr., Willis J. Boyle and Louis M. Boyle shall be entitled to, and shall receive a reasonable salary to be fixed by mutual consent and which shall be part of the operating expense of the business.

Fifth—The partners agree to devote their time, skill and energy to the best interest of the business of the copartnership during the continuance thereof.

Sixth—Profits and Losses: The profits arising out of the conduct of the business shall be divided between the partners in the same proportion as their contribution to capital, namely, twenty five

per cent (25%) to Robert J. Merritt, fifteen per cent (15%) to Robert J. Merritt, Jr., twenty five per cent (25%) to Willis J. Boyle and thirty five per cent (35%) to Louis M. Boyle; and the losses shall be borne in the same proportion.

Seventh—Accounts and Books: Full, just, true and accurate accounts shall be kept of all matters relating to the business to be conducted by the partnership, and the books containing such accounts shall at all times be open to the inspection of all partners. Upon the request of any two partners, arrangements shall be made to have the books and accounts of the firm audited annually by an outside accountant.

Eighth—Inventory: On or near the first of each year, there shall be taken a full and complete inventory of the business and the partners shall render each to the other a just and true account of all matters and things relating to said business at the time of taking of such inventory, and, thereupon the profits and losses, as the case may be, shall be ascertained and divided in the same proportion as their contribution to capital as shown in the Third Article. If profits have been made, each partner shall be credited with his share thereof; and if losses have been sustained, each partner shall be charged with his share thereof.

Ninth—Liquidation in Event of Death: In the event of the death of any partner during the continuance of this agreement, then, and in such event, the interest of the partner so dying shall be deter-

mined, if such death occurs within three months of the taking of the preceding inventory, as of the date of such preceding inventory and as it then appeared; and, in the event of the death occurring within three months of the next succeeding inventory to be taken as above provided, then the interest of such deceased partner shall be determined from such inventory which shall be taken in the same manner as the inventories were customarily taken by the firm, except that all good outstanding accounts shall be valued at one hundred per cent (100%) of their gross amount and that an adjustment shall be made by an agreement as to the value of doubtful accounts.

Tenth—In the event of the death of any partner within three months of the taking of the next preceding inventory, his interest, determined as aforesaid from said inventory, shall be paid to his duly authorized legal representatives within thirty days after his death, as follows: One third in cash, one third by promissory note of the surviving partners, payable six months from said date, with interest at five per cent (5%) per annum, and the remaining one third by a further promissory note payable twelve months from said date, with like interest.

Eleventh—In the event of the death of any partner within three months prior to the date of taking the next succeeding inventory as herein provided, the interest of such deceased partner, to be determined by the next succeeding inventory, shall be paid to his duly authorized legal representative thirty days after the date of the taking of such

inventory, one third in cash and the remaining two thirds by two equal promissory notes, payable at the same periods and at the same rate of interest as hereinabove provided in the Tenth Article hereof.

Twelfth—In the event of the death of any partner, his salary shall cease from the date of his death, but his representatives shall be entitled to withdraw an amount equal to his salary from the firm until the settlement with such representatives as above provided, but this amount so drawn, from the date of his death until the date of the settlement, shall be charged against the share or portion in the business of such deceased partner.

In Witness Whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of:

/s/ ROBERT J. MERRITT

/s/ ROBERT J. MERRITT JR.

/s/ WILLIS J. BOYLE

/s/ LOUIS M. BOYLE

[Endorsed]: Filed March 22, 1946.

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BOARD'S EXHIBIT No. 29  
ARTICLES OF COPARTNERSHIP

Articles of Copartnership, made and entered into this 15th day of November, 1945, between W. G. Durant, 1245 Wentworth, Pasadena, California, R. J. Merritt, 111 N. Las Palmas Avenue, Los Angeles, California, R. J. Merritt, Jr., 111 N. Las Palmas

Avenue, Los Angeles, California, Louis M. Boyle, Ojai, California, Marion Jenks, 511 N. Muirfield Road, Los Angeles, California, W. J. O'Keefe, 845 S. Keniston, Los Angeles, California, and L. J. Mitchell, 1117 Story Place, Alhambra, California.

Witnesseth, that said parties herein, having mutual confidence in each other, do hereby form with each other a partnership agreement on the terms and conditions following, that is to say:

First: The copartnership shall be for the following purposes: To carry on the designing, engineering and manufacturing of generators, motors, transformers, switchboards, various components of commercial radio equipment and such other items as may be decided upon by the parties herein; fabrication of generator and motor parts, wiring and winding of parts for generators and motors, fabrication of skid bases, sheet metal housings, switchboard frames; to maintain with service parts the applicable electrical and mechanical equipment now in the field; and to do such other work as may be decided upon by the parties herein.

To commence on the 15th day of November, 1945, and to continue until terminated by the parties herein.

Second: Said copartnership shall be conducted and carried on under the firm name and style of Pioneer Electric Company and the place of business shall be at 3700 East Olympic Boulevard, Los Angeles, California, and/or at such other place or places as the partners shall hereafter determine.



Third: The capital of said copartnership shall consist of all the assets of any nature whatsoever and the income and profits arising from the employment thereof, with the exception of what each partner is entitled to draw out as hereinafter mentioned, shall become and constitute a permanent fund for copartnership purposes.

The working capital of the copartnership shall be contributed as follows: Twenty five per cent (25%) by W. G. Durant; twelve and one half per cent (12½%) by R. J. Merritt; twelve and one half per cent (12½%) by R. J. Merritt, Jr.; twelve and one half per cent (12½%) by Louis M. Boyle; twelve and one half per cent (12½%) by Marion Jenks; twelve and one half per cent (12½%) by W. J. O'Keefe; and twelve and one half per cent (12½%) by L. J. Mitchell.

Fourth: Salaries: Each of the partners shall be entitled to, and shall receive a reasonable salary to be fixed by mutual consent and which shall be part of the operating expense of the business.

Fifth: The partners agree to devote their time, skill, and energy to the best interest of the business of the copartnership during the continuance thereof.

Sixth: Profits and Losses: The profits arising out of the conduct of the business shall be divided between the partners in the same proportion as their contribution to capital, namely:— twenty five per cent (25%) to W. G. Durant; twelve and one half per cent (12½%) to R. J. Merritt; twelve and one half per cent (12½%) to R. J. Merritt, Jr.;

twelve and one half per cent (12½%) to Louis M. Boyle; twelve and one half per cent (12½%) to Marion Jenks; twelve and one half per cent (12½%) to W. J. O'Keefe; and twelve and one half per cent (12½%) to L. J. Mitchell. The losses shall be borne in the same proportion.

Seventh: Accounts and Books: Full, just, true and accurate accounts shall be kept of all matters relating to the business to be conducted by the partnership, and the books containing such accounts shall at all times be open to the inspection of all partners. Upon the request of any two partners, arrangements shall be made to have the books and accounts of the firm audited annually by an outside accountant.

Eighth: Inventory: On or near the end of each fiscal year, there shall be taken a full and complete inventory of the business and the partners shall render each to the other a just and true account of all matters and things relating to said business at the time of taking of such inventory, and, thereupon the profits and losses, as the case may be, shall be ascertained and divided in the same proportion as their contribution to capital as shown in the Third Article. If profits have been made, each partner shall be credited with his share thereof; and if losses have been sustained, each partner shall be charged with his share thereof.

Ninth: Liquidation in Event of Death: In the event of the death of any partner during the continuance of this agreement, then, in such event, the

interest of the partner so dying shall be determined, if such death occurs within three months of the taking of the preceding inventory, as of the date of such preceding inventory and as it then appeared; and, in the event of the death occurring within three month of the next succeeding inventory to be taken as above provided, then the interest of such deceased partner shall be determined from such inventory which shall be taken in the same manner as the inventories were customarily taken by the firm, except that all good outstanding accounts shall be valued at one hundred per cent (100%) of their gross amount and that an adjustment shall be made by an agreement as to the value of doubtful accounts.

Tenth: In the event of the death of any partner within three months of the taking of the said preceding inventory, his interest, determined as aforesaid from said inventory, shall be paid to his duly authorized legal representatives within thirty days after his death, as follows: One third in cash, one third by promissory note of the surviving partners, payable six months from said date, with interest at five per cent (5%) per annum, and the remaining one third by a further promissory note payable twelve months from said date, with like interest.

Eleventh: In the event of the death of any partner within three months prior to the date of taking the next succeeding inventory as herein provided, the interest of such deceased partner, to be determined by the next succeeding inventory, shall be

paid to his duly authorized legal representative thirty days after the date of the taking of such inventory, one third in cash and the remaining two thirds by two equal promissory notes, payable at the same periods and at the same rate of interest as hereinabove provided in the Tenth Article hereof.

Twelfth: In the event of the death of any partner, his salary shall cease from the date of his death, but his representatives shall be entitled to withdraw an amount equal to his salary from the firm until the settlement with such representatives as above provided, but this amount so drawn, from the date of his death until the date of the settlement, shall be charged against the share or portion in the business of such deceased partner.

In Witness Whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of:

/s/ W. G. DURANT

/s/ R. J. MERRITT

/s/ R. J. MERRITT, JR.

By /s/ R. J. MERRITT

/s/ LOUIS M. BOYLE

/s/ MARION JENKS,

W. J. BOYLE,

Attorney in Fact

/s/ W. J. O'KEEFE

/s/ L. J. MITCHELL

[Endorsed]: Filed March 22, 1946.

**BOARD'S EXHIBIT 30**

(For identification only)

(A notice was posted on Company Bulletin Board)

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**RESPONDENT 1**

(See Respondent 1—Trial Examiner 1)

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**RESPONDENT 2**

(See Respondent 2—Trial Examiner 2)

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**RESPONDENT 4**

Rejected.

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**RESPONDENT 5**

Rejected.

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**RESPONDENT 6**

Rejected.

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**RESPONDENT 7**

Rejected.

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**RESPONDENT 8**

Rejected.

A.F.L. EXHIBIT No. 1  
LOCAL 1981 NEWS

Hearings before the National Labor Relations Board in your case are now in the testimony taking stage. Charles Spallino, your Chief Shop Steward, employee of the Company for 19 years and former President of the Five and Over Club was on the stand for three days last week.

Testimony given depicts a sordid story of double dealing chicanery by the company, its attorneys and Roberts of the Stovemounters. Schemes were hatched and plans made to flout the U. S. Government and deprive the employes of representatives of their choice. The purpose behind all these unfair labor practices had just one purpose: to keep the employes from obtaining wages increases.

It is a deplorable condition that you have to work for an employer who is still operating in the dark ages as far as labor relations are concerned but you can rest assured that when this fight is over you will have the free and unhampered opportunity to enjoy true democratic trade union representation under the banner of the United Steelworkers of America CIO.

A meeting of O'Keefe and Merritt workers will be called in a short time to give you a complete picture of what has transpired at these hearings.

The workers at Republic Supply Company last week showed their ability to pick out a real Union to represent them. At the Government election the USA-CIO polled 20 votes to 11.

## Join USA-CIO

### Extra

The Electrical Workers Union (AFL) has informed the National Labor Relations Board and you Union that it is not a party to any contract or Agreement with either O'Keefe & Merritt or the Pioneer Elec. Co. and disavows any participation in the unfair labor practises at your plant.

It is to be hoped that other AFL Union will follow the enlightened leadership of the IBEW and give their members an opportunity to secure wage increases and better working conditions under the representation of their certified bargaining agent, the USA-CIO.

### USA-CIO Wins Again

The CIO Steelworkers this week won a NLRB election at the SKF Industries by a vote of 1,733 to 572.

At the US Pipe & Foundry in Chattanooga the USA-CIO won by a vote of 250 to 76 for the AFL Moulders. This plant had been under contract with the AFL but evidently the employes decided they had better have a real union and got it.

Bond Crown employes are consolidating their recent election victory by joining Local 1981. These employes know that the way they are going to better their conditions is to join up and make their shop 100%. They are setting an example which the employees at O&M would do well to follow.

### Join USA-CIO

#### Attention Veterans

The laws of your country provide machinery for

the peaceful settlement of labor disputes. The Wagner Labor Act allows workers in any plant to select the Union they wish to represent them by a democratic election supervised by the National Labor Relations Board.

Such an election was held at O'Keefe & Merritt November 21, 1945, with the USA-CIO winning 177 to 114 AFL. The employes chose the CIO in spite of flagrant violations of the Wagner Labor Act by the Company which had made a deal with Mr. Roberts of the AFL Stovemounters Union whereby if the Company could make the employes vote for the AFL, Mr. Roberts would see that his "Union?" would not ask for wage increases except for a few favored stooges. This deal was a failure. However the Company did not give up. Neither did the dues hungry Roberts. The Company changed its name to the Pioneer Electric and signed a closed shop agreement with this phony "union."

At this point your Union took legal action by filing charges with the National Labor Relations Board and the Company is now on trial by the United States Government. As a result of this action the Company is not attempting to enforce the closed shop provisions of the backdoor agreement.

We believe that as the hearing progress some of the AFL Unions will realize the sordid use the company is making of them and withdraw any claim of representation. The IBEW has already refused to be a party to such activities and has so notified the N.L.R.B. and your Union.



Among the charges filed against the company are:

1. Conspiring to violate Government certification.
2. Coercing and intimidating its employes.
3. Preventing the employes from joining the USA-CIO.
4. Attempted bribery of CIO officials.
5. Depriving the employes of their rights under the Wagner Labor Act.

Join USA-CIO and Turn the Page  
Join USA-CIO

The history of this case clearly shows that the principles involved are the same as those over which the war was fought and for which you were asked and did risk your lives. It is regrettable that you must now come back to civilian life and work in a plant whose management employs the tactics of a Hitler to deprive its employes of their democratic American right to be represented by the Union of their choice.

The USA-CIO and its members in the plant do not propose to accept this situation. We have a growing membership with the guts and the courage to insist that this is still America. Many of these members are veterans and they call upon every veteran at O'Keefe & Merritt to join them in their fight to preserve democracy at home as they have fought for it abroad.

The 1,000,000 members of the USA-CIO, the greatest labor Union in the country, are solidly behind you in this fight. The 1800 members of your

Local 1981 are making voluntary contributions to finance the battle.

You can help by joining the USA-CIO and supporting your former comrades in arms and carrying on the fight with them.

There is no initiation fee for former service men. You can join by merely paying the \$1.50 monthly dues. The sooner all the employes at the plant join the sooner we can secure better wages and working conditions.

Get In and Fight  
Join USA-CIO Today  
Foundries Settle

After a prolonged battle the foundries under contract with the USA-CIO caved in on March 13th and agreed to pay the 18½c increase and arbitrate the Union shop issue. The companies had made an open and concerted stand against granting a Union shop as demanded at Warman, Alloy and Kinney, but the unshaken solidarity of the USA members forced them to agree to arbitration. The companies used every known device to threaten our members but failed to scare anybody. Just another proof that workers at any plant can secure their just demands by joining the United Steelworkers of America.

Foundry rates in USA-CIO foundries are now the highest by far of any plants in the area and these rates can be secured at O'Keefe & Merritt when the workers realize they have nothing to fear and everything to gain by joining the Union.

Wage negotiations at Joslyn Company have started as their contract had a re-opening clause. This plant went CIO shortly before O&M did but at Joslyn the employees immediately signed up with the CIO after whipping the AFL in the election with the result they have had a contract for five months, have received wage increases as a result of a job evaluation plan and are now negotiating for their 18½¢ per hour. Could be at O&M too.

Wow! General Motors and General Electric throw in the sponge. 300,000 CIO workers get their 18½¢. When General Motors, the most powerful corporation in the world, can't lick the CIO, where does O'Keefe & Merritt think they are going to get off?

By the way, have you seen anything in the papers about an AFL Union getting an 18½¢ per hour increase for its members?

Neither Have We. Join USA-CIO.

Local 1981

(Fastest growing Local in USA-CIO)

Office 4100 E. Slausen Ave., Maywood, Cal.

Phone LA 5211.

P. O. Box 167, Maywood, Cal.

Perry Nethington, President.

Ray Colville, Representative.

G. J. Conway, International Repr.

Louis Ortega, President O&M Unit.

Chas. Spallino, Chief Stewart O&M.

Plants represented by Local 1981 USA-CIO.

Angelus Sanitary Can Co., A. M. Castle

Company, Bond Crown Company, Auto Sheet Metal Co., Hydromatic Dye Co., Joslyn Co. of Cal., O'Keefe & Merritt, Rheem Mfg. Co., Cal. Cold Rld. Steel, Oil Well Mfg. Co., Pac. Iron & Steel, Naco Mfg. Co.

Regular membership meeting—Fourth Wednesday of month.

Initiation Fee \$3.00 (Veterans free).

Dues \$1.50 per month.

Eligible to join—Any unorganized worker.

If you have a friend working in an unorganized shop tell him to contact our office and we will undertake to organize it.

Be Wise—Organize—Join USA-CIO  
Get Off the Fence

Do you want an 18½¢ per hour wage increase?

Do you want to get paid for holidays?

Do you want an improved vacation plan?

Do you want seniority rights?

Do you want proper job classification?

Do you want double time for Sunday?

Do you want time and one half for Saturdays?

There is just one way to get these things if you want them and it isn't by sitting on the fence waiting to see what will happen. You can get them by joining the USA-CIO today.

The initiations fee \$3.00 (none for veterans).

The monthly dues \$1.50.

See the USA-CIO committeeman with the red button who is carrying on your fight and will welcome your help. Show him that you have as much guts and courage as he has.

**Join CIO Today**

Are you getting these rates at O&M? If you are not you are just robbing yourself because the employes in other USA-CIO shops are now enjoying these wage scales.

Tool & Die Maker.....	1.785
Machinist .....	1.485
Tool Grinder .....	1.485
Turret Lathe .....	1.405
Assembler .....	1.395
Helper .....	1.185
Welders .....	1.535
Molders .....	1.535
Pattern maker .....	1.785
Galvanizer .....	1.435
Electrician .....	1.535
Solderer .....	1.285
Enameler .....	1.285
Laborer .....	1.085

The money the Company has already paid to its attorneys to think up schemes to deprive you of your rights would go a long way to paying you wage increases. The employes of O&M can get these wage rates by joining the USA-CIO.

Have you registered to vote? Congressional elections are coming up this year and getting the right people in office is as important as getting an increase. There is a determined attempt to wipe out price control which would mean sky rocketing living costs and only by electing men who will vote for your interests can you keep down your living costs.

Join USA-CIO and Register to Vote Today

[Endorsed]: Filed March 21, 1946.

[Endorsed]: No. 11919. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. O'Keefe and Merritt Manufacturing Company, and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as copartners, doing business as Pioneer Electric Company, Appellees. Transcript of Record. Upon Petition for Enforcement With Modifications of an Order of the National Labor Relations Board.

Filed May 4, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

Case No. 11919

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

O'KEEFE AND MERRITT MANUFACTURING  
COMPANY, and L. G. MITCHELL, W. J.  
O'KEEFE, MARION JENKS, LEWIS M.  
BOYLE, ROBERT J. MERRITT, ROBERT  
J. MERRITT, JR., and WILBUR G. DU-  
ANT, Individually and as Co-Partners, Doing  
Business as PIONEER ELECTRIC COM-  
PANY,

Respondents.

NOTICE OF MOTION TO INTERVENE

To: Mr. Robert N. Denham, General Counsel, Na-  
tional Labor Relations Board, 815 Connecticut  
Avenue, N. W., Washington, D. C.

To: Mr. Cecil W. Collins, 2875 Glendale Boulevard,  
Los Angeles, California.

Please Take Notice that the annexed motion has  
this day been forwarded to the Clerk's office for  
submission to the Court.

/s/ ARTHUR J. GOLDBERG,  
General Counsel, United Steelworkers of America,  
CIO.

Dated at Washington, D. C., this 30th day of  
July, 1948.

[Title of Circuit Court of Appeals and Cause.]

MOTION TO INTERVENE

To: The Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

Now Come the United Steelworkers of America, Stove Division, Local 1981, C. I. O., and Philip Murray, individually and as President of the United Steelworkers of America, CIO, by their counsel, Arthur J. Goldberg and Frank Donner, and respectfully show as follows:

1. On August 26, 1946, the National Labor Relations Board (hereinafter referred to as the Board) issued a Decision and Order under the National Labor Relations Act (49 Stat. 449, 29 U.S.C.A., secs. 151 et seq.; hereinafter referred to as the Act) in a case known upon the records of the Board as "In the Matter of O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company and United Steelworkers of America, Stove Division, Local 1981, C.I.O., and Stove Mounters International Union of North America, Local 125, affiliated with American Federation of Labor; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, affiliated with American Federation of Labor; International Moulders & Foundry Workers Union of North America, Local No. 374, affiliated with American Federation of



Labor; District Lodge 94, for and on behalf of its affiliate Local 311 of the International Association of Machinists; Brotherhood of Painters, Decorators & Paperhangers of America, Local 792, affiliated with American Federation of Labor; Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, affiliated with American Federation of Labor; and Refrigerator Fitters United Association, Local 508, affiliated with American Federation of Labor, parties to the contract, Case No. 21-C-2689.”

2. Said Decision and Order provides as follows:

“Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, O'Keefe and Merritt Manufacturing Company and L. G. Mitchell, W. J. O'Keefe, Marion Jenks, Lewis M. Boyle, Robert J. Merritt, Robert J. Merritt, Jr., and Wilbur G. Durant, individually and as co-partners, doing business as Pioneer Electric Company, Los Angeles, California, and their officers, agents, successors, and assigns, shall:

“1. Cease and desist from:

(a) Urging, persuading, warning, or coercing their employees to join Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; International Moulders & Foundry Workers Union of North America,

Local No. 374, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL; encouraging membership in any of the above named organizations; and discouraging membership in United Steelworkers of America, Stove Division, Local 1981, CIO, or any other labor organization of their employees;

(b) Recognizing or in any manner dealing with the IAM and the AFL labor organizations named in the preceding paragraph, or any of them, as the exclusive representatives of the respondents' employees for the purposes of collective bargaining in respect to wages, rates of pay, hours of employment, or other conditions of employment, unless and until said organization, or any of them, shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees;

(c) Giving effect to the union-shop contract dated January 2, 1946, and signed on January 31, 1946, with the IAM and the AFL labor organizations named in paragraph 1 (a) above, or any modification, extension, supplement, or renewal thereof, or to any superseding or like agreement with them;

(d) Refusing to bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, time-keepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

“2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Stove Mounters International Union of North America, Local 125, AFL; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 389, AFL; District Lodge 94, for and on behalf of its affiliate, Local 311, International Association of Machinists; Brotherhood of Painters, Decorators and Paperhangers of America, Local 792, AFL; and Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL, as

the exclusive representatives of their employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until the said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;

(b) Upon request, bargain collectively with United Steelworkers of America, Stove Division, Local 1981, CIO, as the exclusive representative of all production and maintenance employees at the Los Angeles plant of the respondents, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expeditors, pattern makers and pattern maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(c) Post at their plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being

duly signed by the respondents' representative, be posted by the respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this order, what steps the respondents have taken to comply herewith."

3. On August 22, 1947, there became effective certain amendments to the Act.

4. The amended provisions of the Act include Section 9 (f), (g) and (h) thereof (29 U.S.C.A., sec. 159 (f), (g) and (h)). These provisions state:

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its

constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

“(1) the name of such labor organization and the address of its principal place of business;

“(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded \$5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

“(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

“(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

“(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

“(6) a detailed statement of, or references to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disburse-

ment of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

“(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

“(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

“(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10

with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

“(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.”

5. The Board has filed in this Court a Petition for Enforcement With Modifications of an Order of



the National Labor Relations Board, dated Washington, May 28, 1948.

6. Said Petition requests the Court to make certain modifications in the Board's order of August 26, 1946.

7. The Petition contains among other requested modifications the following:

“(6) In order to conform with the policy expressed in Section 9 (f) (g) and (h) of the Act, as amended, of withdrawing the aid of the Act's processes from a labor organization which fails to comply with the provisions of Section 9 (f) (g) and (h), to the extent only that the unfair labor practice involves a refusal to bargain to be remedied by an order to bargain, the Board recommends modification of the foregoing order as follows:

(a) By inserting after the letters 'CIO' in the second line of paragraph 1 (d) thereof the following phrase: if and when said labor organization shall have complied, within thirty (30) days from the date of the decree enforcing this order, with Section 9 (f) (g) and (h) of the Act, as amended,

(b) By inserting after the words 'Upon request' in the first line of paragraph 2 (b) thereof the following phrase: and upon compliance by the Union with the filing requirements of the Act, as amended, in the manner set forth above,

(c) By inserting after the words, 'notice attached hereto,' in the second line of paragraph

2 (c) thereof, the following phrase: modified to include the following phrase to be inserted after the first sentence of the first subparagraph of the notice and to be preceded by a semicolon: 'provided that said labor organization, and any national or international labor organization of which it is an affiliate or constituent unit, shall have complied, within thirty (30) days from the date of the decree enforcing the Board's order, with Section 9 (f) (g) and (h) of the National Labor Relations Act as amended.' "

8. The United Steelworkers of America, CIO, has already complied with Section 9 (f) and (g) of the Act, as amended, and Local 1981 of the United Steelworkers of America will comply with said sections within thirty (30) days from any decree of this Court.

9. Neither the officers of the United Steelworkers of America, CIO, nor the officers of Local 1981, United Steelworkers of America, CIO, have complied with Section 9 (h) of the Act, as amended, nor will said officers comply. Said failure to comply with Section 9 (h) is solely for the reason that said officers believe that the provisions of Section 9 (h) of the Act, as amended, are illegal, unconstitutional and void on the ground that said section violates Article I, Section 9 (3) of the Constitution of the United States and the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States.

10. A modification of the Board's Decision and

Order as requested by said Board will deprive the United Steelworkers of America, Stove Division, Local 1981, C. I. O., its officers and its members of vital constitutional rights.

Statement of Points and Authorities

11. Section 9 (h) of the Act, as amended, is illegal, unconstitutional, void and of no effect. Said section violates Article I, Section 9 (3) of the Constitution of the United States and the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States for the following reasons:

(a) Section 9 (h) of the National Labor Relations Act, as amended, abridges the rights of the Union's officers to freedom of thought, speech, press and assembly in violation of the First Amendment.

(b) Section 9 (h) requires an expurgatory oath, an unconstitutional device used to exact conformity and control thought.

(c) Section 9 (h) of the National Labor Relations Act, as amended, abridges the right of the members of the Union to elect officers of their own choosing and interferes with the right of freely elected officers of the Union to function on behalf of the membership by imposing a political test on such officers, thus impairing the right of free assembly in violation of the First Amendment.

(d) Section 9 (h) of the National Labor Relations Act, as amended, is vague, indefinite and uncertain and prescribes no ascertainable stand-

ard of conduct so that any officer of the Union who is required to execute the affidavit under said section is afforded no reasonable means to avoid prosecution under Section 35 A of the Criminal Code.

(e) Section 9 (h) of the National Labor Relations Act, as amended, imposes an unreasonable restriction upon the exercise of the rights of free speech and assembly by the officers and members of the Union, in that it compels the loss of valuable rights as a condition to the exercise of the rights of free speech and assembly, in violation of the First Amendment and the due process clause of the Fifth Amendment.

(f) Section 9 (h) of the National Labor Relations Act, as amended, abridges the right of the officers of the Union to engage in political activity, a right reserved to the people by the Ninth and Tenth Amendments.

(g) Section 9 (h) of the National Labor Relations Act, as amended, discriminates among political beliefs and applies only to labor organizations and not to employers. This constitutes a violation of the Fifth Amendment.

(h) Section 9 (h) of the National Labor Relations Act, as amended, constitutes a bill of attainder in violation of Article I, Section 9 (3) of the Constitution of the United States.

(i) Section 9 (h) of the National Labor Relations Act, as amended, deprives the members of the Union of valuable property rights and of

the opportunity to obtain enforcement of said rights in the courts.

Prayer

Wherefore, the United Steelworkers of America, Stove Division, Local 1981, C. I. O., and Philip Murray, individually and as President of the United Steelworkers of America, CIO, respectfully pray that they be permitted to intervene in Case No. 11919 for the purpose of urging that Section 9 (h) of the Act, as amended, is illegal, unconstitutional and void and that the Court enforce the Board's order without any modification requiring compliance with said Section 9 (h).

Respectfully submitted,

UNITED STEELWORKERS OF AMERICA,  
STOVE DIVISION, LOCAL 1981, C. I. O.

PHILIP MURRAY,

Individually and as President of the United Steelworkers of America, CIO.

By /s/ ARTHUR J. GOLDBERG,

/s/ FRANK DONNER,

Attorneys, 718 Jackson Place,  
N. W., Washington 6, D. C.

Filed Aug. 5, 1948. Paul P. O'Brien, Clerk.

At a Stated Term, to wit: The October Term, 1948, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday, the fifth day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present:

Honorable Francis A. Garrecht,  
Senior Circuit Judge, Presiding.  
Honorable William Healy,  
Circuit Judge.  
Honorable Homer T. Bone,  
Circuit Judge.

[Title of Cause.]

#### ORDER ALLOWING INTERVENTION

Upon reading the petition of United Steelworkers of America, Stove Division, Local 1981, C. I. O., and Philip Murray, Individually, and as President of the United Steelworkers of America, C.I.O., for leave to intervene herein.

It Is Ordered that said petitioners be, and they hereby are permitted to intervene in the above-entitled cause, and to file briefs herein.